

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:

J. KIRBY DEVELOPMENT, L.L.C. AND
VEDANTA CENTER OF GREATER
WASHINGTON D.C., INC.,
Applicants

Nat Ballard
John Clapsaddle
Wes Guckert
Jeff Kirby
Scott Wolford

For the Application

Scott Wallace, Esquire
Attorney for the Applicant

Max Bronstein
Richard Kauffinger
Pat P. O'Neill
Keith Smith

In Opposition to the
Development Plan

Laurence Andrews
Linda Nishioka

In Opposition to the Application

Danielle Bouchard

Neither in Opposition Nor in Support

Zoning Application No. G-836

Before: Françoise M. Carrier, Hearing Examiner

HEARING EXAMINER'S SUPPLEMENTAL REPORT AND RECOMMENDATION

TABLE OF CONTENTS

	Page No.
I. SUMMARY.....	3
II. STATEMENT OF THE CASE	4
III. FINDINGS OF FACT.....	5
A. Subject Property.....	5
B. Surrounding Area.....	7
C. Zoning and Land Use History	16
D. Proposed Development	17
E. Development Plan	22
F. Master Plan	32
G. Environmental Issues and Storm Water Management.....	39
H. Public Facilities	40
1. Transportation.....	41
2. Water and Sewer	47
3. Schools	47
I. Support for the Application.....	48
J. Community Participation.....	49
IV. SUMMARY OF HEARING.....	57
A. Applicant's Case in Chief	57
B. Community Participation	63
C. Applicant's Rebuttal.....	70
V. ZONING ISSUES.....	73
A. The Development Plan	74
B. Public Interest.....	92
VI. CONCLUSIONS	93
VII. RECOMMENDATION.....	94

I. SUMMARY

The present application seeks to rezone 16 acres of land at the intersection of Bel Pre Road and Homecrest Road in Silver Spring from the RE-2 Zone to the PD-2 Zone. The 16-acre tract is made up of three parcels. Two are developed with single-family detached homes and the third is the site of the Vedanta Center, a non-denominational worship center. The Vedanta Center has joined J. Kirby Development as an applicant. Together, they propose development of 38 new homes (20 single-family detached, 12 duplex units and six MPDU townhouses) and construction of a new worship building. The existing Vedanta Center building and guest house would remain.

This case comes to the District Council on remand. The Council remanded the application in March, 2006, following the Hearing Examiner's recommendation, to give the Applicant the opportunity to (i) rectify a series of deficiencies on the Development Plan that were identified in the Council Resolution and in the Hearing Examiner's Report and Recommendation, and (ii) propose a form of development that would be compatible with existing land uses in the surrounding area, including those confronting the subject site on the west side of Homecrest Road.

The Applicant has made substantial revisions to its application, including moving six detached homes from the Homecrest Road side of the site to the northeast corner, overlooking the stream valley. Where the earlier Development Plan proposed ten detached homes along Homecrest Road, the present plan proposes seven detached homes, situated on either side of a reforestation area measuring 0.63 acres. The MPDUs have been moved from a lot fronting on Homecrest Road to an internal lot, which would improve the visual compatibility of the development with the surrounding area and would better integrate the MPDUs into the development as a whole. The revised Development Plan also shows the duplex units considerably farther from the adjacent Wheaton Moose Lodge property than on the earlier plan, with a significant forested buffer.

The Planning Board and its Technical Staff recommend approval of the application, finding that the proposed development would satisfy the purpose clause of the PD Zone, would implement the applicable master plan and would be compatible with the surrounding area.

After a careful and thorough review of all the evidence of record, the Hearing Examiner recommends that that proposed rezoning be approved on grounds that it would satisfy the requirements of the zone, it would be compatible with land uses in the surrounding area and it would serve the public interest.

II. STATEMENT OF THE CASE

Application No. G-836, filed on March 3, 2005 by Applicants J. Kirby Development, L.L.C. and Vedanta Center of Greater Washington D.C., Inc., requests reclassification from the RE-2 Zone (Residential, one-family, two-acre minimum lot size) to the PD-2 Zone (Planned Development) of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland, in the 13th Election District. The property is identified as Part of Lots 3, 4 and 5 of the "Homecrest" subdivision, recorded in Plat Book 25, Plat 1586. The Vedanta Center is currently the owner of Lot 4. An affiliate of J. Kirby Development became the record owner of Lot 3 subsequent to the Council's remand of this case, and J. Kirby Development has a contract to purchase Lot 5. The proposed Development Plan contemplates land swaps between the two Applicants, with both remaining as owners.

The application was initially reviewed by Technical Staff of the Maryland-National Capital Park and Planning Commission ("MNCPPC") who, in a report dated October 11, 2005 (the "2005 Staff Report"), recommended *approval*.¹ The Montgomery County Planning Board ("Planning Board") considered the application on October 20, 2005 and recommended *approval* by a vote of 4 to 0. A public hearing was conducted on November 4, 2005 at which testimony and evidence were presented in support of and in opposition to the application. In a report dated February 6, 2006, the Hearing Examiner recommended a remand of the application to give the Applicant the opportunity to rectify deficiencies on the Development Plan and propose a form of development that would be

¹ The 2005 Staff Report is liberally paraphrased and quoted in Part II of this report.

compatible with existing land uses in the surrounding area.² On March 7, 2006, the District Council, acting on this recommendation, remanded the case for the stated reasons.

The Applicant submitted a revised Development Plan on March 10, 2006 with very minor changes, including removing one house along Homecrest Road. Technical Staff reviewed the revised plan and, in a memorandum dated April 14, 2006, recommended approval. On April 27, 2006, the Planning Board voted to defer consideration of the revised plan due to concerns about compatibility. Following extensive consultation with community members and Technical Staff, the Applicant submitted additional, more substantial revisions to the Development Plan in June and July, 2006. Technical Staff reviewed the revised application materials and, in a memorandum dated July 20, 2006 (the "2006 Staff Report"), recommended *approval* of the rezoning. See Ex. 93. On July 27, 2006, the Planning Board voted 4 to 0 to recommended *approval* of the rezoning and Development Plan. A public hearing was convened by the Hearing Examiner on August 8, 2006, after proper notice, at which evidence and testimony were presented both in support of and in opposition to the application. The record was held open briefly for supplemental submissions by the Applicant and responsive comments by community members, and closed on August 29, 2006.

III. FINDINGS OF FACT

For the convenience of the reader, the findings of fact are grouped by subject matter. Any conflicts in the evidence are resolved under the preponderance of the evidence test.

A. Subject Property

The subject property consists of approximately 16 acres of land located in the northeast quadrant of the intersection of Bel Pre Road and Homecrest Road, roughly midway between Bel Pre Road's intersections with Georgia Avenue to the west, and Layhill Road to the east. The three lots comprising the subject property form a nearly square tract of land, with

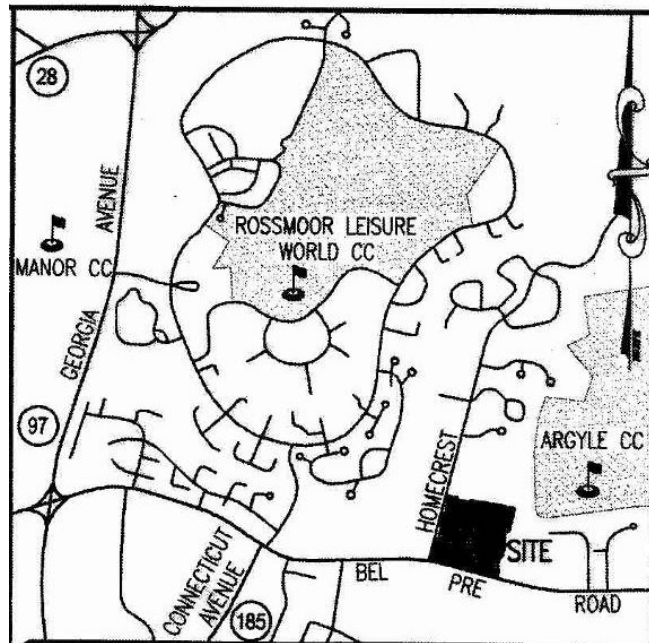
² The Background and Summary of Hearing portions of the Hearing Examiner's Report and Recommendation dated February 6, 2006 are hereby incorporated herein by reference.

approximately 867 feet of frontage on Bel Pre Road, a five-lane undivided arterial road with an 80-foot right-of-way, and 800 feet of frontage on Homecrest Road, a narrow, two-lane, residential primary street. Confronting to the south, across Bel Pre Road, are three- and four-story apartments and townhouses. Confronting to the west, across Homecrest Road, are Aspenwood Senior Living Community, located at the northwest corner of Bel Pre and Homecrest Roads, which provides assisted living for senior adults and special needs care; three single-family homes; and, diagonally to the northwest, Homecrest House, a senior housing and assisted living facility. To the east, the subject property abuts the Wheaton Moose Lodge property, which is occupied by a social lodge and is about half wooded. To the north, the subject property abuts the Aspen Hill Club, a large complex of indoor and outdoor sports facilities with very large tennis bubbles and other buildings, plus extensive parking lots.

Lot 3, at the east end of the site, is mostly wooded, and has a one-story brick house, a carport and a driveway off of Bel Pre Road. Lot 4, in the center, is also mostly wooded. It is occupied by the Vedanta Center, a worship center consisting of a concrete and stone building with a one-story wing and a two-story wing, which is used for congregation gatherings and as a home for resident monks; a small, brick, 1 ½ story guest house; a paved driveway off of Bel Pre Road; and a gravel parking area. Lot 5, at the west end of the site, consists mostly of grassy fields, with a one-story brick house, a concrete block garage, a metal shed and driveway access from Homecrest Road.

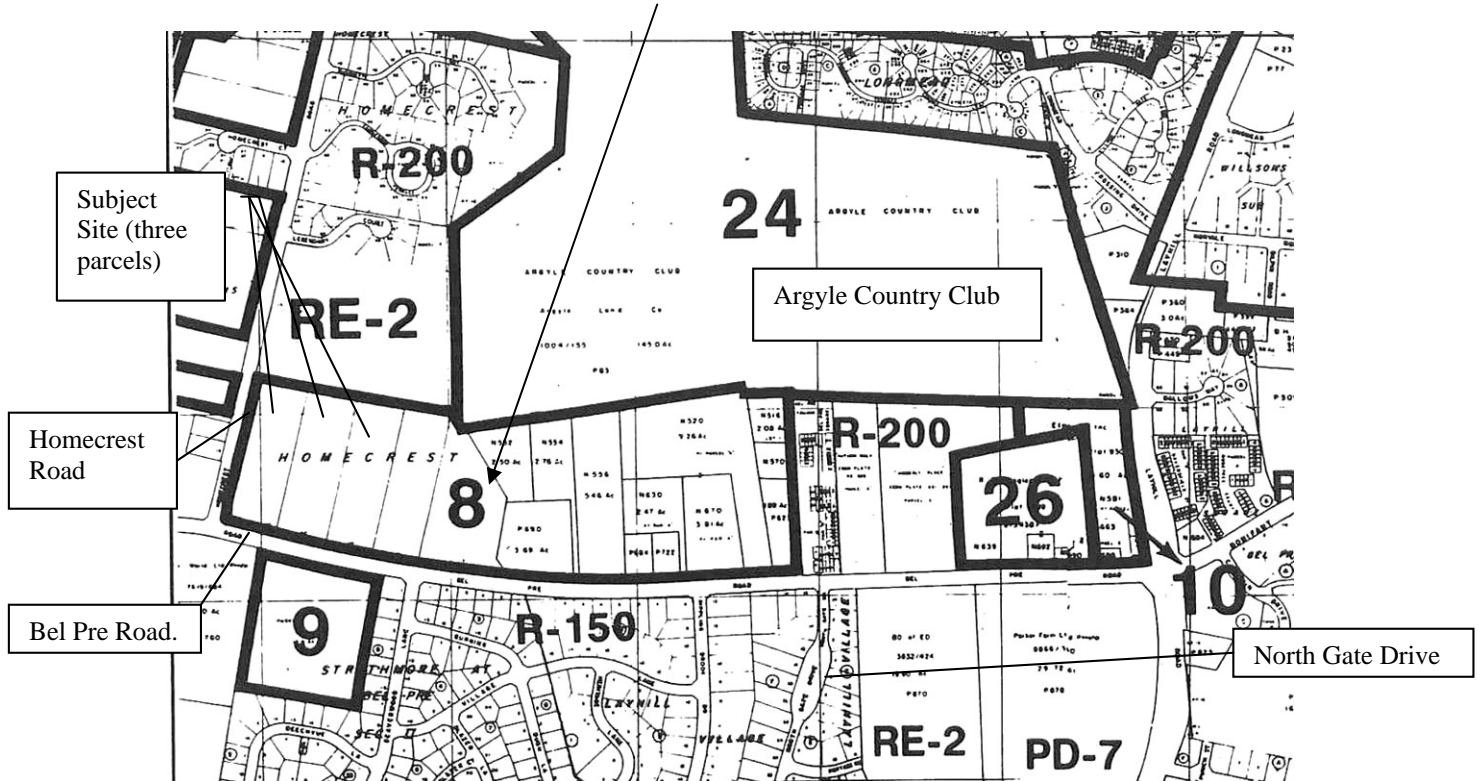
The subject property is gently to moderately sloping. It contains approximately 9.62 acres of forest, with two major forest stands rated good quality. The property contains no flood plains, but a small stream known as Bel Pre Creek flows through the northeast part of the property. As a result, a substantial portion of the combined property is undevelopable stream valley buffer.

The general shape and location of the subject property are shown on the map that follows (excerpted from Ex. 60(a)).

Area Map, from Ex. 60(a)**B. Surrounding Area**

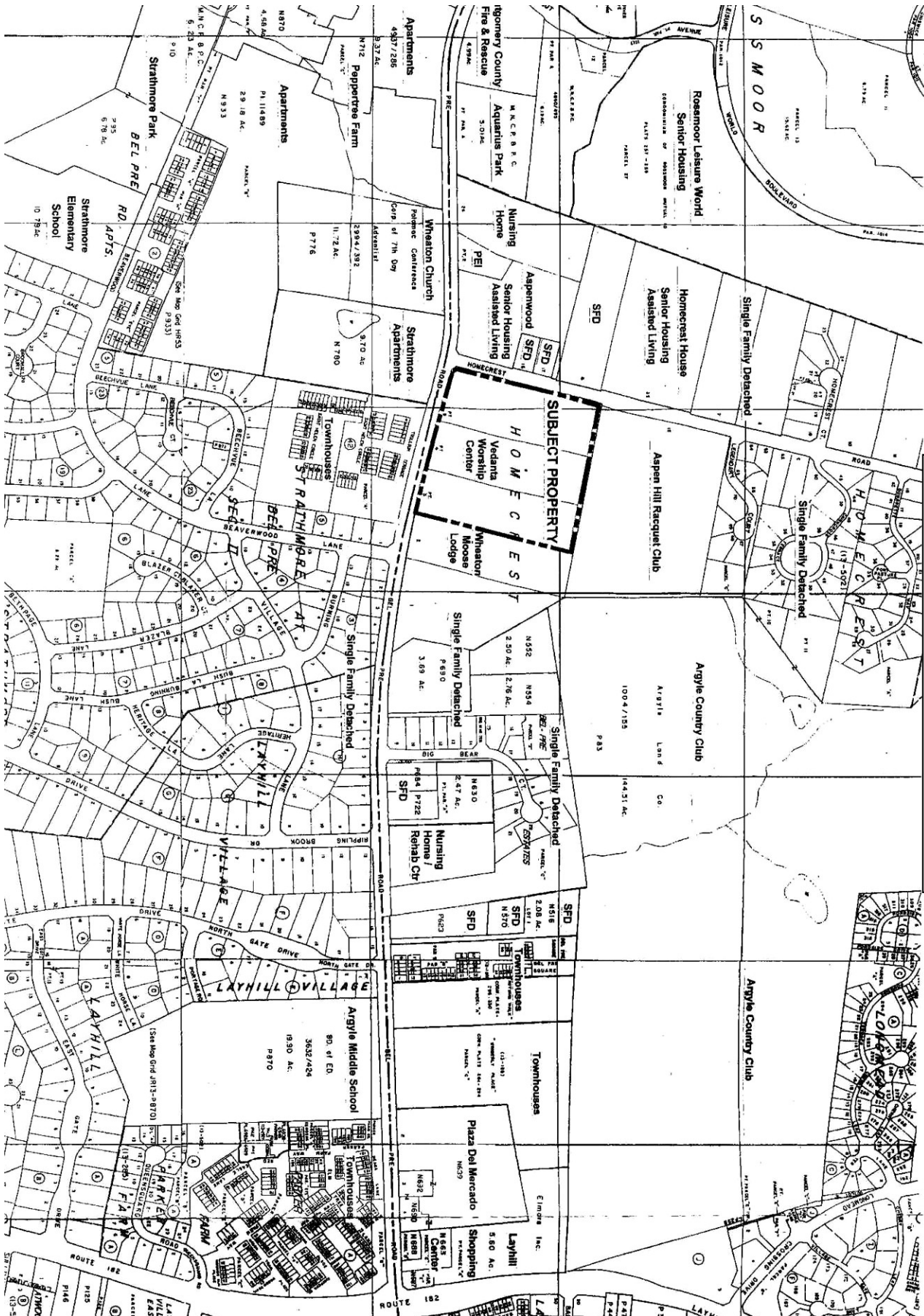
The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development.

In the present case, Technical Staff described the surrounding area as the “Bel Pre Road Area” designated in the *1994 Approved and Adopted Aspen Hill Master Plan* (the “Master Plan”). See 2005 Staff Report, Ex. 28 at 6; Master Plan at 46-47. As shown on the Master Plan map on the next page, this 63-acre area extends from Bel Pre Road on the south to Homecrest Road on the west, the property line of Argyle Country Club on the north and the Bel Pre Square Townhouses on the east (located across from North Gate Drive).

Bel Pre Road Area (Area 8). Master Plan Figure 16, p. 52.

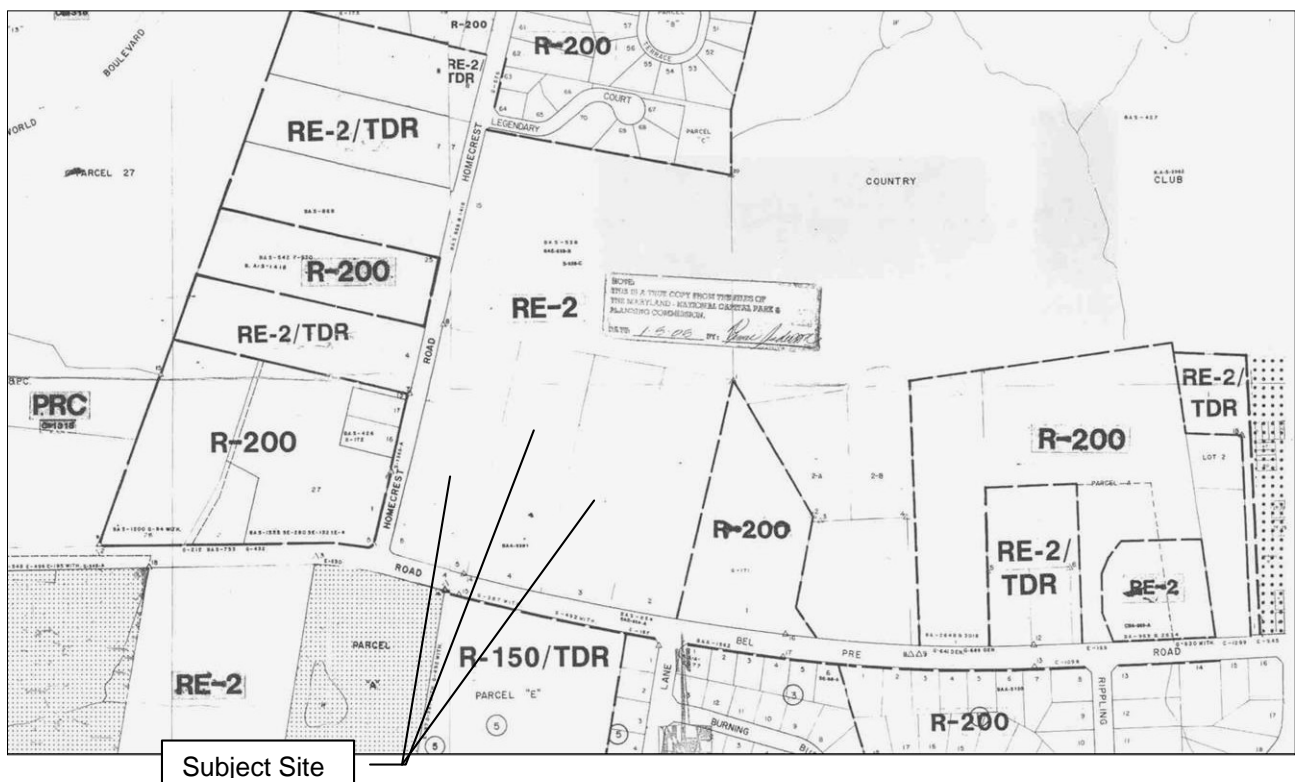
Both Mr. Perrine and Technical Staff appear to underestimate the likely impact of the proposed development, which would represent a significant change in density and intensity of use on a prominent corner property. The Hearing Examiner agrees with Technical Staff that the Bel Pre Road Area as described in the Master Plan may properly be considered part of the surrounding area for purposes of this application. The Hearing Examiner also agrees with Mr. Perrine that confronting properties on Bel Pre and Homecrest Roads, and the adjacent property to the north, none of which are within the Master Plan-defined area, undoubtedly would be affected by the proposed development. Taking both into account, the Hearing Examiner designates the surrounding area as, roughly, the Bel Pre Road Area described in the Master Plan plus properties that are either adjacent to the subject site or directly or diagonally confronting. The relationship of the subject property to existing land uses in the surrounding area is shown on the area map on the next page.

Surrounding Area Map, from Ex. 28(d)



The surrounding area contains a mix of uses including three-story apartment buildings, senior housing including assisted living, three- and four-story townhouses, single-family detached homes, churches, a large sports facility, a social lodge and a country club. As shown on the zoning vicinity map below, the zoning pattern is a mixture of RE-2, RE-2/TDR, R-200 and R-150 zoning. Mr. Perrine explained this apparently random zoning pattern by stating that at one time, the entire area was classified under the RE-2 Zone. In 1970, the master plan recommended R-200 zoning, but that was not implemented. Instead individual, piecemeal zoning applications came in for a variety of zones. Most of the properties in the vicinity were reclassified to their current zones between 1965 and 1980, and were developed with a variety of uses. Mr. Perrine observed that the current Master Plan attempted to reconcile the different rezonings and provide a plan for the developed areas by retaining existing RE-2 classifications, while also recommending the PD-2 Zone for the subject property and the remaining undeveloped property east of it, all the way to Big Bear Court. Mr. Perrine noted that the PD-2 Zone has the same density as the RE-2 Zone, but allows for more design flexibility to achieve some of the Master Plan's other goals.

Zoning Vicinity Map, Ex. 4



The photographs below, provided in part by the Applicant and in part by opposition community member Linda Nishioka, depict some of the nearby land uses.

Entrance to Aspenwood Senior Living Community, from Ex. 104



Choi Residence (closest to Aspenwood), from Ex. 105



View of Aspenwood from Choi Residence, from Ex. 100



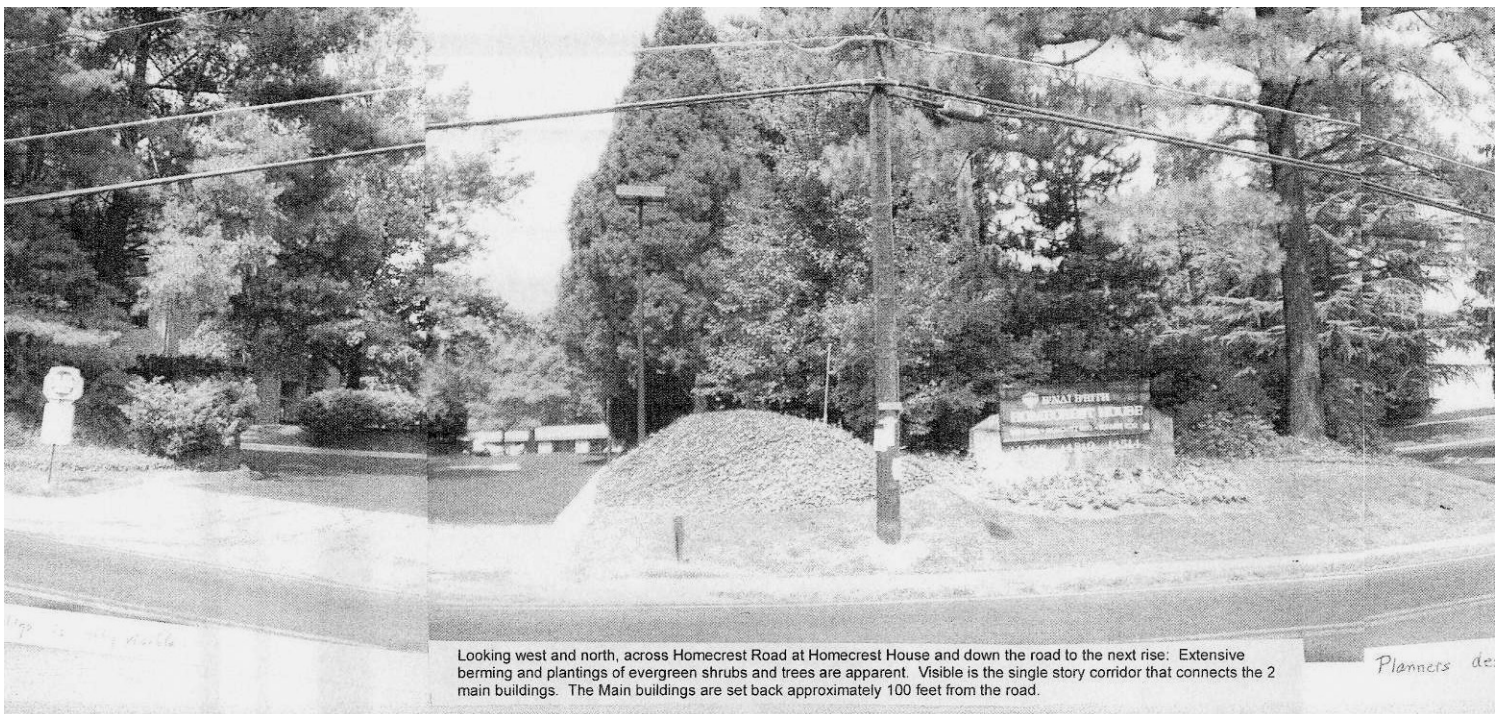
Mitchell Residence, from Ex. 105



Andrews Residence (closest to Homewood House), from Ex. 105



Entrance to Homewood House, from Ex. 106. Buildings Partially Visible through Trees



Entrance to Aspen Hill Club, from Ex. 106



Apartments Across Bel Pre Road from Site, from Ex. 100



Townhouses Across Bel Pre Road from Site, from Ex. 100



Moose Lodge Property and Forested Buffer on Subject Site, from Ex. 100



C. Zoning and Land Use History

The subject property was classified under the R-A (Agricultural Residential) Zone in the 1958 County-wide comprehensive rezoning. The R-A Zone was redesignated the RE-2 Zone by text amendment in 1973, and the subject property's zoning has remained the same since then. The area was recommended for reclassification to the R-200 Zone in the *1970 Aspen Hill Master Plan*, but no sectional map amendment followed. RE-2 zoning on the subject property was confirmed by Sectional Map Amendment G-709 in 1994, as recommended in the 1994 Master Plan.

As noted above, lots 3 and 5 of the subject property are each developed with a single-family home, while lot 4 has been the site of the Vedanta Center for eight or nine years. The Center has ties to Indian spiritual traditions, but considers itself a universal, non-denominational movement, accepting people from all religions and different spiritual paths. The Center teaches spiritual principals and practices including meditation, and tries to maintain a serene atmosphere. The main program is on Sunday morning at 11:00, which involves a series of lectures on different topics, attracting about 60 to 70 people. The Center has study groups on Wednesday and Friday nights from 8:00 to 9:00, youth programs on Saturday afternoons, early morning meditation at 5:30, and evening meditation. Generally, the only people attending weekday activities are the small number who live on site or are staying in the guest house. The Center has larger programs two or three times a year, necessitating a larger parking lot.

The small house on the Vedanta Center property pre-dates the Center and is used as a guest house, where people occasionally come for a retreat for a few days. The house accommodates five comfortably, with a maximum of seven. It is used as a women's guest house, or for a family. The larger, L-shaped building contains approximately 4,300 square feet of space. It houses the auditorium and a residential wing, whose current residents are two monks. Male visitors, some of whom stay overnight every weekend, sleep in the residential wing of the main building, which can accommodate eight residents.

D. Proposed Development

The Development Plan proposes expansion of the Vedanta Center's facilities and the coordinated development of a residential community with a total of 39 dwelling units: 20 new single-family detached homes, 12 new single-family, semidetached duplex units, six single-family attached units (townhouses) to be marketed as moderately-priced dwelling units ("MPDUs"), and the existing Vedanta Center guest house. The largest grouping of homes would be at the west end of the site, near Homecrest Road, with 14 detached homes and six townhouses. The other six detached homes would be in the northeast corner of the site, overlooking the stream valley buffer. The 12 duplex units would be in the southeast corner of the site, south of the stream valley buffer and east of the Vedanta Center parking lot. The preliminary bedroom calculation indicates that the single-family detached units would have four bedrooms, the townhouses would have two bedrooms with an optional third bedroom, and the duplexes would have three bedrooms.

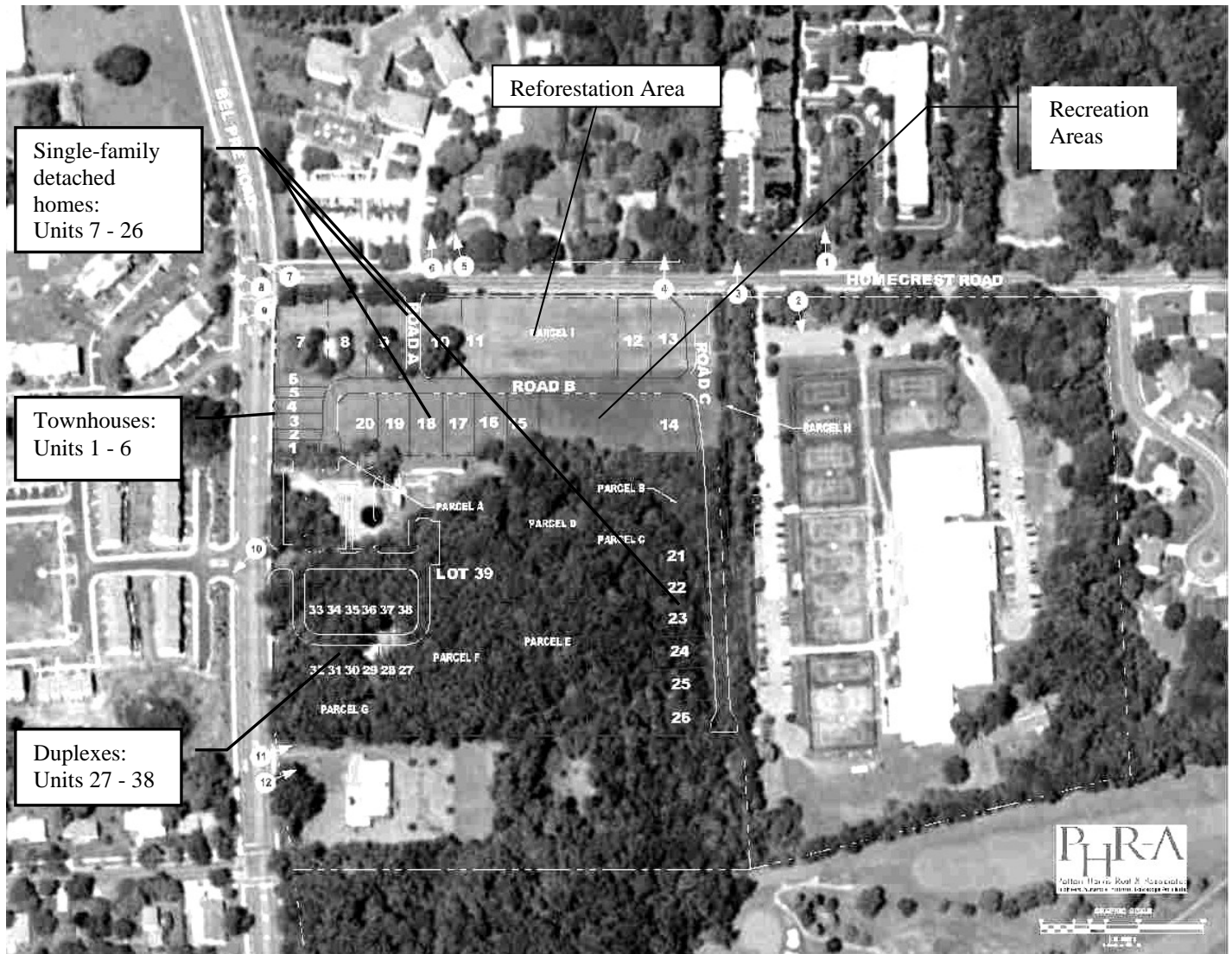
As shown on the aerial photograph on the next page, the detached homes at the western end of the site are shown facing each other across a main road (Road B) and an entrance road (Road A). The townhouse MPDUs are shown grouped in a single location on Road B, in two blocks of three units each, backing onto Bel Pre Road.

The west side of Road B, abutting Homecrest Road, was shown on the earlier Development Plan with one block of MPDUs and ten single-family detached homes. It is now shown with seven detached homes arranged around a 0.63-acre reforestation area.³ Three detached homes are shown south of Road A, so the visually-prominent corner location would be occupied solely by detached homes, rather than a combination of detached homes and townhouses as previously proposed. North of Road A, two detached homes are shown at each end of the block, with the proposed reforestation area between them. The reforestation area would be an "artificial" forest, one that would be created from scratch on what is now a grassy field. It would, nonetheless,

³ The full acreage of the parcel designated for this reforestation is 0.79 acres, but that includes land to be subject to a public utility easement, which does not qualify as reforestation. *Compare* Exs. 91(c), 112(a).

provide a significant visual break in the line of homes. In addition, the homes along Homecrest Road have been pulled back approximately 15 feet farther from the road than on the earlier plan, and the Applicant has committed to creating a permanent, 20-foot landscaped buffer strip between these homes and the new Homecrest Road right-of-way, as well as a sidewalk and street trees.

Aerial Photograph with Proposed Lot Lines, Ex. 99



As shown on an inset on the Development Plan and described by the Applicant's site planner, the Applicant has committed to dedicating sufficient land along its western border to provide 35 feet of right-of-way between its property line and the center line of the road. This is consistent with the Master Plan's recommendation of a 70-foot right-of-way for Homecrest Road.

From the edge of the roadway, the inset shows a grassy strip with trees, then a sidewalk, then the right-of-way line, then a ten-foot landscaping strip to be owned by the HOA and, along all of the residential lots, an additional ten-foot landscaping strip covered by an easement to allow the HOA to carry out planting and maintenance (no landscaping easement is proposed for the reforestation area, because it is already designated for a more-restrictive forest conservation easement). The Development Plan shows primarily shrubs in the HOA-owned portion of the landscaping strip, a fence demarcating the rear lot lines, and evergreen and shade trees in the landscaping strip within the residential lots.

The east side of Road B is shown with a row of seven single-family detached homes, interrupted by a recreation area and an open play area, both of which would overlook the stream valley buffer. The northern end of Road B is shown connecting to "Road C," which would provide a second point of access off of Homecrest Road. This road, which formerly was shown across only part of the northern property line, is now shown extending across the entire northern property line to provide access to the six homes in the northeast corner of the site. Road C is shown with a dedicated right-of-way width of 60 feet from Homecrest Road to its intersection with Road B, after which it tapers down to a 50-foot right-of-way. The additional width near Homecrest Road is intended to comply with a Master Plan recommendation for a road of sufficient width to provide future access to the Aspen Hill Club, in the event that the proximity of Road C and the current entrance to the Aspen Hill Club is deemed to create an unsafe condition. The Applicant's transportation planner testified that access could be provided from the Aspen Hill Club to Road C at a point opposite Road B, which would provide for an orderly intersection and would avoid interfering with any of the Aspen Hill Club's buildings and parking lots.

The existing Vedanta Center worship building and its attached residential wing, roughly in the middle of the site, would be retained. A new, 6,500-square foot addition would be built onto the rear wall of the existing worship building, with a landscaped courtyard between the old and new structures. The new building would provide a worship space with approximately 212

seats, a study room, an entry lobby, bathrooms, storage space, a cellar gathering space and a kitchen. The Center plans to use the auditorium in the existing building as a multi-function meeting space. The new building would provide a larger auditorium, as well a space to serve refreshments after worship activities, which is currently lacking. The architecture for the new building is based on a well-known Indian Hindu temple, incorporating a blend of traditional Indian and European styles. The maximum height would be 24 feet, plus 20 feet more for cupolas and domes. The new Vedanta Center building would face east, towards a wooded area abutting the stream valley buffer. It would be partially obscured from Bel Pre Road by the existing Vedanta Center buildings, so one would have only an oblique view of the new building from Bel Pre Road.

The Development Plan allocates the land immediately south of the Vedanta Center, between the Center and Bel Pre Road, to an 85-space parking lot for the Vedanta Center. East of the parking lot, in the southeast corner of the site, the Development Plan shows 12 duplex units.⁴ The duplex units are shown with access via the same driveway serving the Vedanta Center; cars would turn left to enter the Vedanta Center parking lot or right to reach the cluster of duplex units. The Development Plan depicts the 12 units as six buildings, arranged in two rows of three. The plan shows a sidewalk connecting Bel Pre Road to the duplex units, and continuing on to link the duplexes to sidewalks within the Vedanta Center facility, and from there to a path leading along the stream valley buffer to proposed recreation areas on the west side of the site, and eventually to Homecrest Road.

One of the more significant changes on the Development Plan is the location of the duplex units. These units have been moved farther to the west, away from the Wheaton Moose

⁴ Testimony from a representative of the Vedanta Center indicated that these units would be under the Vedanta Center's ownership, and that the Center hopes to sell the units with covenants restricting their occupancy to members of the Vedanta Center community. A question was raised as to the legality of such covenants, which might be considered discriminatory under federal, state and/or county law. The District Council will not be making a judgment on the legality or appropriateness of any such covenants by acting on this rezoning request.

Lodge property. They are now shown separated from the Wheaton Moose Lodge property by a forested area approximately 77 feet deep, which is to be conveyed to the Homeowner's Association ("HOA") for the development and protected by a Category One Conservation Easement. This configuration increases the distance between the lodge structure and the closest residential unit from approximately 62 feet on the earlier plan to about 110 feet. This spacing was accomplished principally by moving the duplex units closer together, so they face each other across a one-way road rather than a two-way road divided by a grassy median.

To the west, the duplex units are shown separated from the Vedanta Center parking lot by the shared access road and a 30-foot landscaped area, in addition to the backyards of the units themselves. To the north, they continue to abut a dry stormwater management pond and a forested area. To the south, the buffering shown on the Development Plan is somewhat different for the two rows of units. The western row of units, closer to the Vedanta Center, is separated from Bel Pre Road by the access road that would serve the duplex units, plus a landscaped strip about 40 feet wide. The eastern row of units, closer to the Wheaton Moose Lodge property, is separated from Bel Pre Road by an existing forested area about 65 feet deep.

As noted above in connection with the duplex units, the proposed Development Plan provides for sidewalks and pathways that would connect each of the residential areas of the development with each other, the Vedanta Center, a partial trail along the stream valley buffer, the on-site recreation areas and the abutting streets. As noted, the Development Plan shows one point of access on Bel Pre Road, for the Vedanta Center and the 12 duplex units. The residential areas along Homecrest Road and in the northeast corner of the site would be accessed via two points of entry on Homecrest Road, connecting to Roads A, B and C. Road B would have what Mr. Perrine described as a "friendly connection" to the Vedanta Center parking lot – a paved connection that would be available to pedestrians and emergency vehicles, but not to normal traffic. Allowing normal traffic through that connection could lead to the undesirable outcome of motorists driving through the proposed development to avoid the Bel Pre/Homecrest Road traffic light.

With regard to phasing, the Development Plan divides the proposed development into four phases (grading and infrastructure, single-family detached homes and townhouses, duplex units, and Vedanta Center expansion, in that order). It specifies, however, that the four phases may occur in any order or simultaneously, provided that “construction of the 6 MPDU townhouses will commence no later than commencement of the 18th market rate unit.” Ex. 112(a).

E. Development Plan

Pursuant to Code § 59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3. The Development Plan is binding on the Applicant except where particular elements are identified as illustrative or conceptual. The Development Plan is subject to site plan review by the Planning Board, and changes in details may be made at that time. The principal specifications on the Development Plan – those that the District Council considers in evaluating compatibility and compliance with the zone, for example – may not be changed without further application to the Council to amend the Development Plan.

The principal component of the Development Plan in this case is a document entitled Development Plan, Exhibit 112(a), which is reproduced on pages 24 to 31 below. Additional elements of the Development Plan include aerial photographs of the area (Exs. 38, 39 and 99) and a Natural Resources Inventory/Forest Stand Delineation (“NRI/FSD”), attached to Ex. 73(a)).

The Development Plan, Exhibit 112(a), satisfies the requirements of Code § 59-D-1.3 by showing access points, approximate locations of existing and proposed buildings and structures, preliminary classification of dwellings by number of bedrooms, parking areas, intended right-of-way dedications for Roads A, B and C and Homecrest Road, and areas intended for common use but

not public ownership (recreation areas and stream valley). The Development Plan specifies that lot sizes, shapes and building locations will be approximately as shown, with exact sizes, shapes and locations to be determined at Preliminary Plan and Site Plan proceedings. The intent of this language is to allow for minor shifts in lot lines and building locations while ensuring that if this project goes forward, the general locations shown for detached, duplex and townhouse units will not change in the Applicant's Preliminary Plan and Site Plan submissions. The Development Plan has one minor error that will have to be corrected on the Development Plan submitted for certification, if the rezoning is approved: it identifies Lot 3 under its prior, rather than current, ownership.

The Development Plan specifies (in language that is not described as illustrative, and therefore is binding) how the project would satisfy the development standards for the zone. This includes a maximum height for residential buildings of 40 feet, and a maximum height for the new worship center of 24 feet, plus 20 feet more for cupolas and domes. These provisions also include a commitment to preserve at least 45 percent of the gross land area as green area, which is considerably higher than 30 percent required in the PD Zone. Parking is planned to exceed the Zoning Ordinance requirement, with (preliminarily) four spaces per unit for detached homes (two garage, two driveway), two spaces for townhouses and duplex units (one garage, one driveway), and 85 spaces for the Vedanta Center.

The Development Plan also contains additional, textual binding elements that memorialize a variety of commitments the Applicant has made to the Planning Board and the community. These address issues such as landscaped buffers, access points, architectural finishes along Homecrest Road, and the number of units. These additional binding elements are reproduced on page 27 below. The landscape buffer area along Homecrest Road is depicted in some detail in an inset on the Development Plan, and the types of plantings are identified on a legend. These items may be seen on page 25 below.

The graphic portion of the Development Plan, Exhibit 112(a), is reproduced on the next page, with textual elements of the plan provided on the pages that follow.

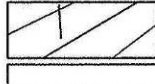
Additional elements of Development Plan, Ex. 112(a).

LEGEND:

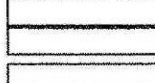
EXISTING TOPO



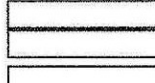
PROPOSED TOPO



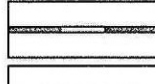
PROPOSED WATER



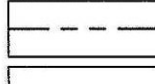
PROPOSED SEWER



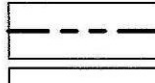
PROPOSED STORM DRAIN



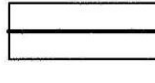
PROPOSED LOT LINES



PUBLIC RIGHT OF WAY



PROPOSED BUILDINGS

125' STREAM
VALLEY BUFFEREXISTING WATERS OF
THE U.S.

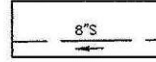
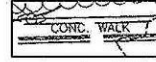
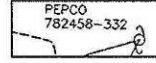
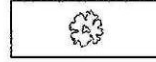
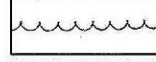
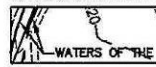
EXISTING TREELINE

EXISTING SPECIMEN
TREEEXISTING CURB &
GUTTEREXISTING TELEPHONE
POLE

EXISTING SIDEWALK

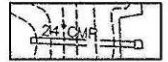
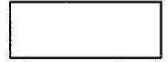
EXISTING SEWER

STREAM BUFFER

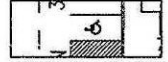
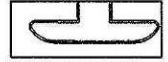
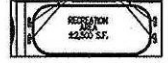


SCALE: 1"=200'

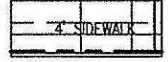
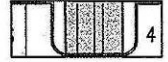
EXISTING STORM DRAIN

PROPOSED LIMIT OF
DISTURBANCE

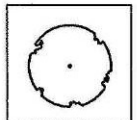
PROPOSED TREELINE

PROPOSED ACCESSIBLE
PARKING SPACEPROPOSED CURB &
GUTTERPROPOSED RECREATION
AREA

PROPOSED SIDEWALK

PROPOSED SPECIAL
PAVER AREA**PLANTING LEGEND**

PROP. SHADE TREE



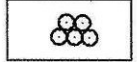
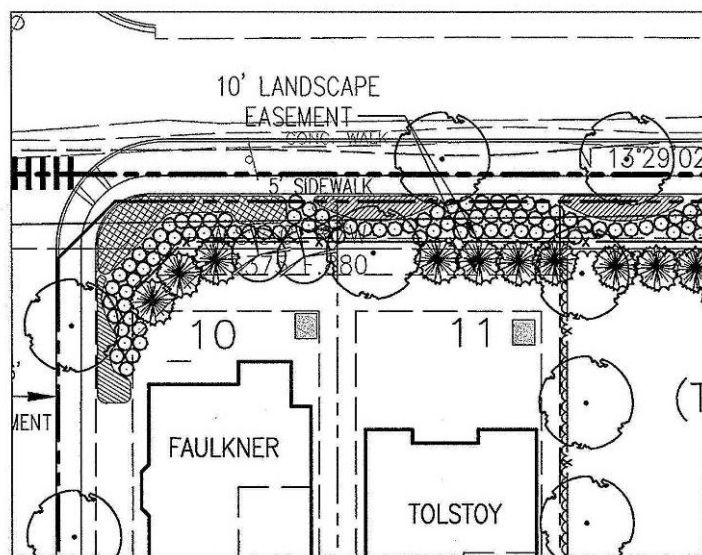
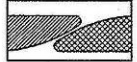
PROP. ORNAMENTAL TREE



PROP. EVERGREEN TREE



PROP. SHRUBS

PROP. PERENNIAL
PLANTINGSTYPICAL LANDSCAPE TREATMENT FOR LOTS ADJACENT TO HOMECREST ROAD
(N.T.S.)

Additional elements of Development Plan, Ex. 112(a).

PD-2 DEVELOPMENT STANDARDS:**Setbacks:**

As per section 59-C-7.15.(b), for land that adjoins land for which the area Master Plan recommends a one-family detached zone, no building other than a one-family detached residence can be constructed within 100 feet of such land

Density:

As per section 59-C-7.14 of the Zoning Ordinance—2 Units per Acre — may be increased by 22% (2.44 units per acre) if 15% MPDUs are provided

Building Height:

As per section 59-C-7.15.(b), for land that adjoins land for which the area Master Plan recommends a one-family detached zone, no building can be greater in height than its distance from such land

Green Area:

Minimum 30% of Gross Area as per Section 59-C-7.16 of the Zoning Ordinance (30% of 16.02 acres — gross area = 4.81 acres)

Provided:

No buildings other than single family detached units are located within 100 feet of adjacent land to north that is recommended for single family detached zone (RE-2) in Aspen Hill Master Plan; land adjoining the property to the east is recommended for PD Zone in the Aspen Hill Master Plan

Provided:

Up to 2.4 units per acre — up to 39 units including 6 MPDUs (15.7% of total units).

Provided:

Residential Units— Maximum of 40 feet in height — all units located minimum of 60 feet from adjacent land to north recommended for single family detached zone in Aspen Hill Master Plan; land adjoining the property to the east is recommended for PD Zone in the Aspen Hill Master Plan

Worship Center— Maximum of 25 feet — located over 400' from adjacent land to north recommended for single family detached zone in Aspen Hill Master Plan; land adjoining the property to the east is recommended for PD Zone in the Aspen Hill Master Plan

No other adjoining land is recommended for residential zoning in the Aspen Hill Master Plan

All heights as defined in Section 59-A-1.2 of the Zoning Ordinance. All cupolas and domes are exempt from building height restrictions per Section 59-B-1.1 of the Zoning Ordinance. Cupolas and domes shall not exceed 20 feet in height, excluding decorative elements and finials, as measured from the roof of the worship center.

Provided:

7.33 acres provided or 46% of gross area*

*Green Area provided is approximate and is subject to change based on final engineering and further revision during subsequent Preliminary and Site Plan proceedings, provided that minimum of 45% of gross area will be provided.

Additional elements of Development Plan, Ex. 112(a)

ADDITIONAL TEXTUAL BINDING ELEMENTS:

The Binding Elements are an integral part of this development plan and have the same force and effect as the standards and specifications set out in the Montgomery County Zoning Ordinance (1994, as amended) and are binding on the Applicant and all reviewing agencies. The specifications of the development plan must be strictly applied and any deviations must be approved by the district council by way of the development plan amendment process set forth in Section 59-D-1.7 of the Zoning Ordinance.

1. The number of units will not exceed 39 (to include the existing single family residence located on the worship center property).
2. Access will be from a single point on Bel Pre Road and two points on Homcrest Road.
3. The addition to the worship center shall not exceed 6,500 square feet of gross floor area.
4. Landscaping and fencing as shown on the Development Plan along Homcrest Road (Lots 7-13) for 20' immediately adjacent to and easterly of the public right-of-way shall be maintained by the HOA. Landscaping along Bel Pre Road (Lots 1-7, 39 and Parcel c) immediately adjacent to and northerly of the public right-of-way for 20' shall be maintained by the HOA (Lots 1-7, Parcel c) or the Vedanta Center of Greater Washington, DC. (Lot 39).
5. All access points shall be maintained free and clear of any sight distance obstructions located on subject property.
6. There will be a maximum of 7 dwelling units along Homcrest Road.
7. To help ensure compatibility with the surrounding neighborhood, the rear of the homes along Homcrest Road will be designed and finished with additional architectural elements typically found on building fronts, including double hung windows with circle tops, and additional moldings around windows and doors.
8. There will be a minimum of 6 dwelling units fronting master planned Road C. This does not count any side yards for homes fronting on Road B or Homcrest Road.
9. To ensure compatibility with the surrounding neighborhood, no detached sheds or outbuildings are permitted in the rear yards along Homcrest Road and in the rear yards of Lots 15-20. This prohibition is to be included in the HOA documents.
10. Landscaping along Homcrest Road will include larger caliper hardwood and evergreen trees and will emphasize native species and avoid plants on the Maryland State Invasive Species list.
11. To meet the community identification recommendation of the Aspen Hill Master Plan, the development will include "Loghill" in its name.
12. Land dedication and construction of Homcrest Road and Road C are to be in compliance with the recommendations of the Aspen Hill Master Plan.
13. Applicant to place Category I Conservation Easement on areas shown on the Preliminary Forest Conservation Plan dated July 13, 2006 for on-site reforestation and forest retention totaling a minimum of 4.73 acres.

DEVELOPMENT PROGRAM:

- Phase I – Commence grading and infrastructure of up to 39 residential lots, develop finished lots
- Phase II – Commence construction of up to 20 single family homes and 6 MPDU townhouses on the finished lots
- Phase III – Commence construction of up to 12 duplex homes on finished lots
- Phase IV – Commence construction on the 6,500± SF Vedanta Center Expansion.

*The Phases I-IV described above may occur in any order or simultaneously provided that construction of the 6 MPDU townhouses will commence no later than commencement of the 18th market rate unit.

Additional elements of Development Plan, Ex. 112(a).

PARKING SCHEDULESingle Family Detach

Required Parking Spaces: 2 spaces per unit (2 x 19=38)

Proposed Parking Spaces: 4 spaces per unit (2 garage / 2 driveway)
76 total spaces

*Existing single family residential dwelling unit is located on worship center site and utilizes parking provided thereon.

Townhouse:

Required Parking Spaces: 2 spaces per unit (2 x 6=12)

Proposed Parking Spaces: 2 spaces per unit (1 garage / 1 driveway)
12 total spacesDuplex:

Required Parking Spaces: 2 spaces per unit (2 x 12=24)

Proposed Parking Spaces: 2 spaces per unit (1 garage / 1 driveway)
24 total spacesWorship Center:

- - Total number of seats in main auditorium: 212

Required Parking Spaces: 1 space per 4 seats (212/4=53 spaces)

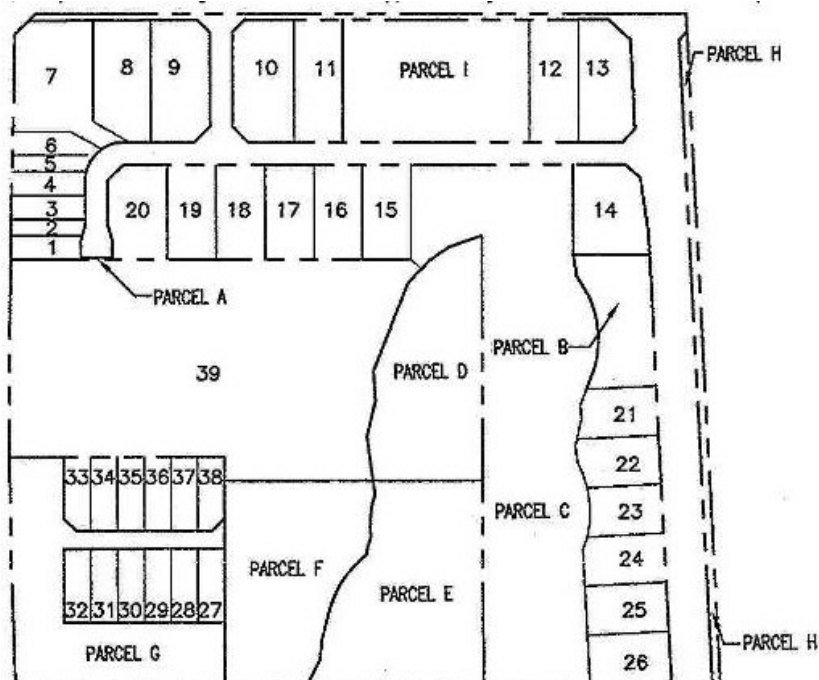
Proposed Parking Spaces: 85 total spaces *

81 Regular Spaces @ (9' x 18')

4 Handicapped Van Spaces

(1 Additional Loading Space)

*Final number of parking spaces to be determined during subsequent Preliminary Plan and Site Plan proceedings. Location of parking is approximate.

PROPOSED LOT AND PARCEL KEY:

SCALE: 1" = 100'

Additional elements of Development Plan, Ex. 112(a).

PROPOSED LOT AND PARCEL TABLE*:

	<u>PROPOSED USE</u>	<u>ACRES</u>
LOT 1	TOWNHOUSE	0.08 AC.
LOT 2	TOWNHOUSE	0.04 AC.
LOT 3	TOWNHOUSE	0.08 AC.
LOT 4	TOWNHOUSE	0.08 AC.
LOT 5	TOWNHOUSE	0.04 AC.
LOT 6	TOWNHOUSE	0.08 AC.
LOT 7	SFD	0.32 AC.
LOT 8	SFD	0.23 AC.
LOT 9	SFD	0.24 AC.
LOT 10	SFD	0.25 AC.
LOT 11	SFD	0.21 AC.
LOT 12	SFD	0.21 AC.
LOT 13	SFD	0.22 AC.
LOT 14	SFD	0.22 AC.
LOT 15	SFD	0.16 AC.
LOT 16	SFD	0.16 AC.
LOT 17	SFD	0.16 AC.
LOT 18	SFD	0.16 AC.
LOT 19	SFD	0.16 AC.
LOT 20	SFD	0.16 AC.
LOT 21	SFD	0.13 AC.
LOT 22	SFD	0.14 AC.
LOT 23	SFD	0.12 AC.
LOT 24	SFD	0.14 AC.
LOT 25	SFD	0.14 AC.
LOT 26	SFD	0.14 AC.
LOT 27	DUPLEX	0.07 AC.
LOT 28	DUPLEX	0.07 AC.
LOT 29	DUPLEX	0.07 AC.
LOT 30	DUPLEX	0.07 AC.
LOT 31	DUPLEX	0.07 AC.
LOT 32	DUPLEX	0.07 AC.
LOT 33	DUPLEX	0.07 AC.
LOT 34	DUPLEX	0.07 AC.
LOT 35	DUPLEX	0.07 AC.
LOT 36	DUPLEX	0.07 AC.
LOT 37	DUPLEX	0.07 AC.
LOT 38	DUPLEX	0.07 AC.
LOT 39	WORSHIP CENTER	2.89 AC.
ROW DEDICATION	RIGHT OF WAY DEDICATION	1.74 AC.
PARCEL A	CONVEYED TO HOA	0.002 AC.
PARCEL B	CONVEYED TO HOA	0.29 AC.
PARCEL C	CONVEYED TO HOA	2.02 AC.
PARCEL D	OWNED BY VEDANTA CENTER	0.77 AC.
PARCEL E	CONVEYED TO HOA	0.98 AC.
PARCEL F	CONVEYED TO HOA	0.85 AC.
PARCEL G	CONVEYED TO HOA	0.87 AC.
PARCEL H	CONVEYED TO HOA	0.18 AC.
PARCEL I	CONVEYED TO HOA	0.79 AC.
 SUB TOTAL:		 18.01 AC.

*Areas shown are approximate. Final determination of areas shall be determined at subsequent Preliminary Plan and Site Plan proceedings.

General Notes from Development Plan, Ex. 112(a)

GENERAL NOTES:

1. 2' topography prepared by Patton Harris Rust + Associates, pc (April 2005).
2. Boundary prepared by Patton Harris Rust + Associates, pc from available records.
3. Existing Zoning: RE-2
4. Proposed Zoning: PD-2
5. Gross Tract Area: ±18.02 acres
 Lot 3: 4.97 acres
 Lot 4: 5.30 acres
 Lot 5: 5.75 acres
6. Election District: 13
7. Planning Area: No. 27 Aspen Hill
8. Tax Map No. HR 563
9. W.S.C. Map: 219 NW 03
10. ADC Map: Montgomery County Map 30, Grid F-5
11. Proposed Use:
 Up to 6 Town House Units
 *Up to 21 Single Family Detached Units (1 Existing / up to 20 Proposed)
 Up to 12 Duplex Units
 Expansion to existing worship center (up to 6,500± SF)
 *Existing single family residential dwelling unit is located on worship center site.
12. Existing Forest Cover: 8.97 AC.
13. Existing water category W-1, existing sewer category S-1.
14. There are no known historic features on this site, or adjacent to this site.
15. There are no cemeteries located on or adjacent to the site.
16. A jurisdictional determination for the subject property has been completed (DENAB-CR-8MS (ASPEN HILL MANOR)05-02275-11). No wetlands have been found on this site.
17. Developer/Contract Purchaser:
 J. Kroy Development
 Attn: Jeff Kirby
 11215 Dovedale Court, Suite B
 Woodstock, MD 21104
 T: 410.442.5080 F: 410.442.5081
18. Owners:
 Lot 5: Arnold K Gobbert et al.
 3031 Bel Pre Road
 Silver Spring, MD 20906

- Lot 4: Vedanta Center of Greater Washington DC
Attn: Mr. Stuart Etkman
3001 Bel Pre Road
Silver Spring, MD 20906
T: 301.603.1772
- Lot 3: Theodore Vogt
1782 Blockner Boulevard
Storbridge, VT 05772
19. Planner/Engineer:
Patton Harris Rust + Associates, pc
8818 Centre Park Drive, Suite 200
Columbia, Maryland 21045
T: 410.997.8930 F: 410.997.9282
20. 10' Public Utility Easement runs along all Public Right of Way.
21. The predominate soil types are:
1C Galia Silt Loam (8-15% slopes)
2B Glenelg Silt Loam (3-6% slopes)
6A Baile Silt Loam (0-3% slopes)
*From Soil Survey—Montgomery County Maryland
22. Location and design stormwater management facilities, roads and utilities shown hereon are approximate based on preliminary design, and are subject to final engineering during subsequent subdivision and site plan proceedings.
23. All sidewalk ramps to conform to Montgomery County DOT Standard No. MC-112.01.
24. All concrete curb and gutter shall be in accordance with Montgomery County DOT Standard No. MC-100.01, and meet existing curb, gutter, and paving in line and grade.
25. Spill gutters on all high side curb and gutter.
26. All parking island curb radii 5' unless otherwise noted.
27. All parking to be painted / striped.
28. Fill areas:
- A. Class I fill to be placed below all buildings.
B. Class II fill to be placed below all paved areas including parking lots, drives, and sidewalks.
C. Class III fill to be placed in areas that will remain "green."
29. Footings to be extended to existing ground where necessary.
30. Slopes: Maximum - 2:1
Minimum - 2% grassed / 1% paved
31. Lot sizes, shapes and building locations will be approximately as shown. Exact sizes, shapes, and locations to be determined at subsequent Preliminary and Site Plan proceedings.

F. Master Plan

1. Summary of Objectives and Recommendations

The subject property lies within the area covered by the *1994 Approved and Adopted Aspen Hill Master Plan* (previously defined as the “Master Plan”).⁵ The Master Plan states the following with regard to its vision (Master Plan at 3):

The Plan reinforces the primarily suburban and residential character of the Aspen Hill area by retaining its residential zoning with relatively few refinements. The Plan seeks to increase opportunities for community interaction. It looks to reduce the social and sometimes physical isolation of various neighbors through both public investment and physical designs of private activity.

The Master Plan states a number of broad goals. The housing goal is stated thus: “Encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles and physical capabilities at appropriate densities and locations.” Master Plan at 21. The environmental goal is to “[c]onserve and protect natural resources to provide a healthy and beautiful environment for present and future generations.” *Id.* at 22. Stream quality, wetland protection and reduction of flooding are specific issues addressed in the plan, and in particular the prevention of further degradation of stream quality and erosion. With regard to community identity and design, the Master Plan states as its goal to “[p]rovide for attractive land uses that encourage opportunity for social interaction and promote community identity.” *Id.* The plan identifies the advancement of social interaction and community identity as a major issue, with many goals and strategies aimed at this objective. These include design improvements to increase connectivity between residential neighborhoods, guidelines for special exceptions and the retention of publicly-owned sites for future community facilities. *Id.*

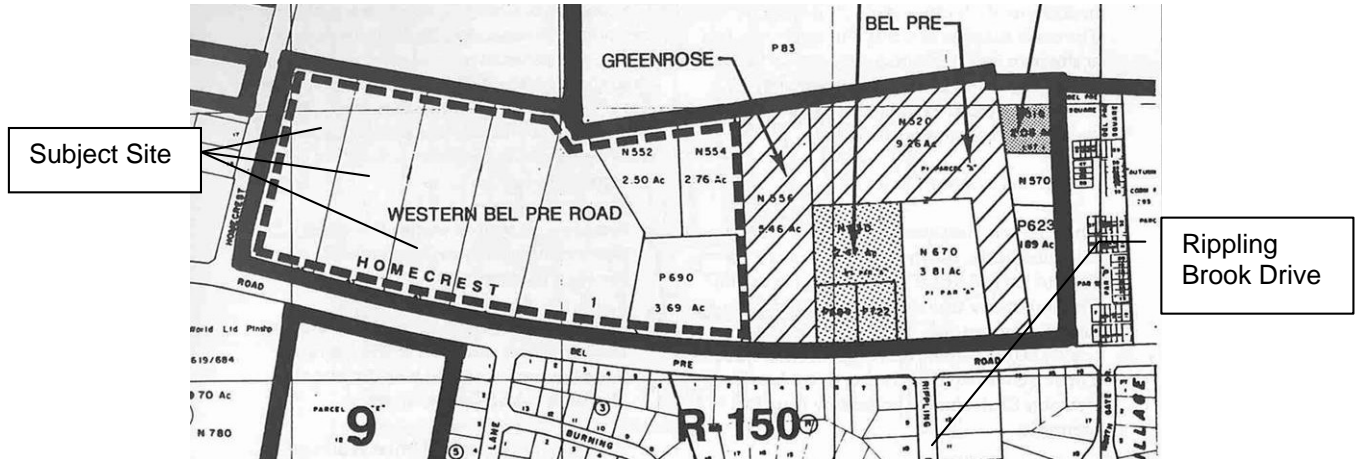
⁵ There are in circulation two versions of the Master Plan that have identical text and maps and the same date. One is in a vertical format and the other is horizontal, so their page numbers are different. The Hearing Examiner, like Technical Staff and Mr. Kauffunger, refers to the page numbers in what appears to be the final published edition (in vertical format). Mr. Perrine referred to the “Interim Edition,” which, based on testimony from a community member, is the version that MNCPPC commonly supplies when a request for a copy of the Master Plan is made. The record contains a complete copy of the Interim Edition and excerpts from the final edition.

The Master Plan divides its geographic range into planning areas. The subject property is within the area designated the “Bel Pre Road Area.” As shown on the map on page 8, this area was along the northern side of Bel Pre Road between Homecrest Road and the Bel Pre Square townhouses (across from North Gate Drive). The Bel Pre Road Area measured approximately 63 acres, and contained the Wheaton Moose Lodge, single-family detached homes and a nursing home. The Master Plan described the history of individual local map amendments in this area, as discussed in Part III.B. above. It also noted that the area was environmentally sensitive, with most properties containing or draining into Bel Pre Creek, a high-quality stream.

The Master Plan recommended a higher density zoning than RE-2 to encourage consolidation of parcels, which would minimize the number of entrances onto Bel Pre Road and facilitate the creation of an internal road network that would minimize the impact of development on Bel Pre Creek. Master Plan at 51. The Master Plan identified three issues to be addressed at the time of development: Bel Pre Creek should be protected for recreational trout populations; 17 acres of stream buffer should be delineated and left undisturbed; and on-site storm water management should be provided for water quality and quantity, with joint facilities for several parcels where possible. *Id.*

Within the Bel Pre Road Area, more detailed recommendations were provided for five subsections, including the Western Bel Pre Road section (shown on the next page), which included the subject property and the next five parcels to the east: the Moose Lodge property, an undeveloped parcel and three parcels in single-family residential use. The Master Plan recommended retaining the existing RE-2 zoning for all properties *not* zoned R-200. Master Plan at 54. It recommended the PD-2 Zone for any assemblage of at least ten acres within the western Bel Pre Road Section. *Id.*

Bel Pre Road Area Subsections, Master Plan Figure 18, p. 55



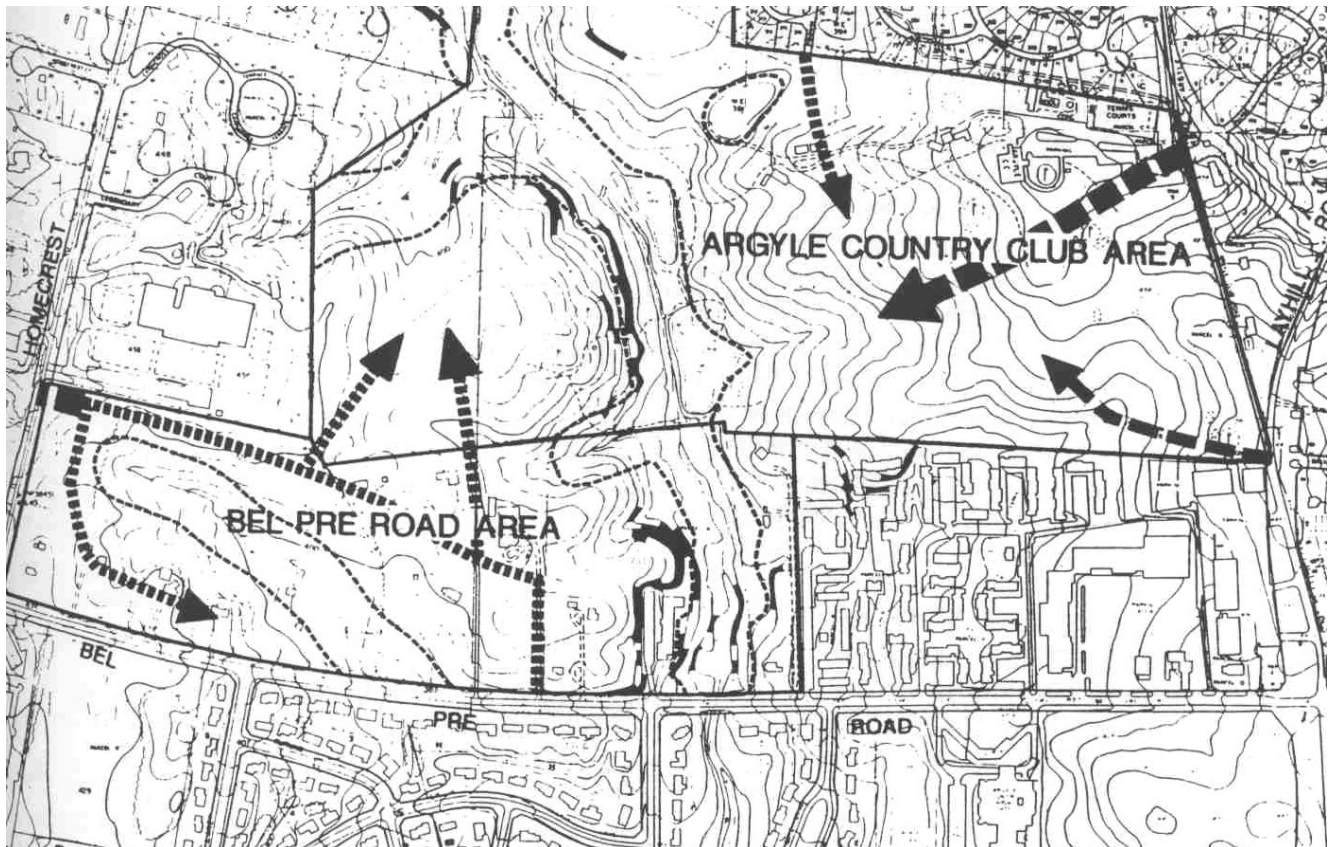
The Master Plan also provided detailed transportation recommendations, including recommendations for internal roadways in the Bel Pre Road Area and the adjacent Argyle Country Club Area, if the country club were to be redeveloped for residential use. The Master Plan noted that Bel Pre Road between Georgia Avenue and Layhill Road (which includes the subject property) “is at the ultimate capacity for an arterial road.” Master Plan at 236. It stated that some properties on the north side of Bel Pre Road between Homecrest Road and Rippling Brook Drive should have a combined access plan “to avoid the safety hazards imposed by having numerous driveways along a busy roadway.” *Id.* The plan recommended providing access to Bel Pre Road properties through a combination of secondary residential and/or tertiary streets, with one point of access through a small development that was then in the planning stages (now known as Bel Pre Estates, located slightly west of Rippling Brook Drive on the north side of Bel Pre Road), and another on Homecrest Road. The latter would permit traffic to enter Bel Pre Road at a signalized intersection. The approximate locations proposed for these internal roads are shown on the map on the next page.

The Master Plan recognized that the proximity of the proposed access point on Homecrest Road to the existing entrance for the Aspen Hill Club, adjacent to the north, could raise safety questions. The plan stated that if the Department of Transportation and Public Works (“DPWT”) deemed the proximity of the two entrances to be a safety hazard, the new

street off of Homecrest Road should still be built, but it should also provide access to the Aspen Hill Club. The Master Plan specifically recommended that the new road be built to primary residential street standards from Homecrest Road to an access point for the Aspen Hill Club, and from there continue as a secondary residential street in a circuitous alignment, ultimately intersecting Bel Pre Road opposite Rippling Brook Drive. Master Plan at 238. The Master Plan emphasized the need for particular review of traffic safety issues in the area, as seen in the following paragraph (Master Plan at 238):

In the future, MCDOT should continue to monitor traffic speeds and accidents on Bel Pre Road, especially in the vicinity of Homecrest Road, and take appropriate action to improve and maintain safety. M-NCPPC should work closely with MCDOT in the review of preliminary plans of subdivision, zoning applications and other development cases to minimize the need for new driveways and to achieve safe locations for new access points to Bel Pre Road when they are necessary.

**Master Plan Proposed Access Plan for Bel Pre Road Area/
Argyle Country Club Area. Master Plan Figure 55, p. 237**



The Master Plan also called for the creation of “green corridors” along state and county roads as major goals for this Master Plan. See Master Plan at 112. “Green corridors” are described as “landscaped, scenic roadways that provide for pedestrians and bicyclists as well as vehicles.” *Id.* Specific to the subject site, the Master Plan recommended that sidewalks be provided on the north side of Bel Pre Road between Connecticut Avenue and Rippling Brook Drive (which includes the subject site’s frontage) “and street trees planted to make it a green corridor.” *Id.*

2. Analysis

Technical Staff concluded that both the earlier Development Plan and the current Development Plan are consistent with the goals and objectives of the Master Plan. See 2005 Staff Report at 15; Community-Based Planning Memorandum attached to 2006 Staff Report. The 2005 Staff Report noted that Road C, along the northern property line, would respond to the Master Plan’s recommendation for an internal road network to minimize both development impacts on Bel Pre Creek and the number of entrances on Bel Pre Road. 2005 Staff Report at 15. This finding was qualified, however: Staff stated that the 50-foot right-of-way proposed for dedication was “consistent with the goal of the master plan if the DPWT considers the proposed roadway to be adequate for the number of units in the proposal.” *Id.* at 16. Staff suggested that “consolidation or widening of the street to a primary standard at this location can be accommodated at the time a new entrance or consolidation of entrances is need[ed] when the adjoining Aspen Hill Club property redevelops.” *Id.* Transportation Planning Staff found the 50-foot right-of-way proposed for Road C on the earlier Development Plan to be adequate, and continues to recommend a 50-foot dedication at the time of preliminary plan review. See Transportation Planning Memoranda attached to 2005 Staff Report and 2006 Staff Report.

The Applicants’ land planner, Mr. Perrine, opined that the Development Plan conforms to the Master Plan recommendations, both general and specific. He noted that it proposes a variety of housing types, lot sizes and price points, including both market rate and

MPDU homes. Mr. Perrine opined that the proposed development would do a good job of encouraging a variety of housing types by reinforcing single-family detached housing, in an area that is surrounded by senior housing, townhouses, garden apartments and scattered single-family detached homes. He stated that the expansion of the Vedanta Center would provide an attractive building with unique architecture, creating a community with a distinct character and identity, which would be enhanced by the walkways connecting the uses to each other and to surrounding areas. He noted that the project assembles 16 acres, and would minimize access points along Bel Pre Road by reducing the number of curb cuts from two to one.

Addressing the Master Plan's environmental concerns, Mr. Perrine noted that the Development Plan preserves the 125-foot stream valley buffer, which would be an "undisturbed recreation area that that can be shared by all residents, as well as visitors to the Vedanta Center." Ex. 28(d) at 9. Mr. Perrine acknowledged during his testimony that no paths are proposed within the stream valley buffer, for environmental protection reasons, so the primary access to the stream valley buffer would be visual. Tr. Nov. 4 at 83-84. He also noted that forest conservation requirements would be met on site, and that all the uses would have a shared, on-site storm water management system for both quality and quantity control.

Community member Richard Kauffunger, who served on the Citizen's Advisory Committee for the Master Plan, testified that he does not oppose the proposed rezoning, but he continues to have concerns about the Development Plan's compliance with the Master Plan. He referred to the first page of text in the Master Plan, which states that the plan seeks to increase opportunities for community interaction and reduce the social and sometimes physical isolation of various parts of the community through public investments and the design of private developments. Mr. Kauffunger suggested that placing the MPDUs together, in one location, would remove them from the rest of the community, rather than spreading them throughout the development so they look like the other houses. The same concern was raised by community representative Max Bronstein. Mr. Bronstein suggested switching the location of one of the

three-unit MPDU buildings with a detached home at the corner of Road A and Homecrest Road. See Ex. 101. The Applicant replied that this switch would be problematic because the three townhouse driveways would create access problems on Road A, and there would be inadequate space for yards due to the shape of the lots and the orientation of the buildings. The Applicant maintains that due to the small size of the proposed development, a single location for both MPDU buildings makes more sense. Later testimony from Mr. Kauffunger suggested ways to resolve the obvious problems with switching the MPDU building with a detached home, but the Applicant did not comment on these suggestions.

Drawing on his experience in working on the Master Plan as a member of the Citizens' Advisory Committee, Mr. Kauffunger stated that the recommended zoning for the western part of the Bel Pre Road Area was kept at RE-2 to give the County leverage, in the form of potential higher density, as a way to get developers to build internal access roads. He acknowledged that the proposed Development Plan depicts a roadway in the right location, but he objects to the size of the proposed dedication. As Mr. Kauffunger pointed out during the remand hearing, the Master Plan recommends that the road along the northern property line be built to primary road standards to the point where access may have to be provided to the Aspen Hill Club, then to secondary road standards for the rest of its length. See Master Plan at 236-238. Based on Montgomery County Department of Transportation Design Standards,⁶ the right-of-way standard is 70 feet for a primary road and 60 feet for a secondary road. The Applicant here proposes 60 feet of right-of-way from Homecrest Road to the point where access might have to be provided to the Aspen Hill Club, and 50 feet (the standard for a tertiary road) for the remainder.

⁶ The Hearing Examiner hereby takes official notice of the Montgomery County Department of Transportation Design Standards, which are available on the web site of the County Department of Transportation.

The Applicant's traffic planner opined that the proposed right-of-way widths would be adequate for the expected traffic volumes, which he considers more important than the specific Master Plan recommendations. Tr. Aug. 8 at 108-109.

Several community members argued that the Applicant should be required to provide for a landscaped separation between the sidewalk and the road along Bel Pre Road, to comply with the Master Plan "green corridors" recommendation and to improve pedestrian safety. Currently, the sidewalk on Bel Pre Road has no separation from the roadway. The Applicant proposes to repair broken portions of the sidewalk, construct handicapped-accessible ramps at the driveway entrance, and cut back vegetation to clear the sidewalk of obstructions. The Applicant maintains that the landscaping it proposes along the Bel Pre Road frontage of the subject site would create a "green corridor," even though it would not separate the sidewalk from the road.

G. Environmental Issues and Storm Water Management

Environmental Planning Staff reports that the Preliminary Forest Conservation Plan meets the basic parameters of the forest conservation law and the Planning Board's Environmental Guidelines, and recommends approval of the application. See Environmental Planning memorandum attached to 2006 Staff Report. The site is not within a Special Protection Area or Primary Management Area. The Preliminary Forest Conservation Plan, Exhibit 91(c), provides for the preservation of four acres of forest, including all forested areas in the stream valley buffer, as well as additional wooded areas adjacent to the stream valley buffer and in the southeast corner near the duplex units. The proposed development would result in clearing nearly five acres of forest cover, requiring a small amount of on-site reforestation. This would be accomplished principally by the creation of the reforestation area on Homecrest Road, plus planting additional trees on the edges of existing wooded areas.

Technical Staff noted, in the 2005 Staff Report, that the subject property contains 93 specimen and significant trees, all but 24 of which are outside of the stream buffer. Staff stated that

the Applicants have “made a commitment to preserve some of the large trees outside the stream buffer in keeping with the intent of the zone,” and that minor changes to the site design would be required during site plan review to protect these trees. No floodplains or wetlands exist on the site.

Storm water management facilities are proposed for the subject site with several different elements: surface sand filters, bio-retention devices, an underground filtering system and a pond for water quantity control. These facilities would collect and filter all of the run-off from the entire site, replacing the existing storm water management facility for the Vedanta Center. An earlier version of the storm water management concept that corresponded with a previous development plan was approved by the Department of Permitting Services (“DPS”), which noted that six of the proposed lots (the MPDU lots) are too small for dry wells, so the Applicants would have to find another approach or seek a waiver of quality control for those units. The Applicants’ engineer stated during the first hearing that a waiver would not be necessary, because other methods can be used to serve the same function. Few changes were necessary in connection with the other changes to the Development Plan.

H. Public Facilities

Under the County’s Adequate Public Facilities Ordinance (“APFO,” Code §50-35(k)), an assessment must be made as to whether the transportation infrastructure, area schools, water and sewage facilities, and police, fire and health services will be adequate to support a proposed development, and in turn, whether the proposed development would adversely affect these public facilities. Both the Planning Board and the Council have roles to play in this assessment process. The Planning Board reviews the adequacy of public facilities at subdivision, under parameters that the County Council sets each year in the Annual Growth Policy (“AGP”) and biennially in the two-year AGP Policy Element.⁷ While the final test under the APFO is carried out at subdivision review,

⁷ See *2003-05 Annual Growth Policy – Policy Element, Resolution No. 15-375*, adopted October 28, 2003, which remains in effect. The Hearing Examiner hereby takes official notice of the 2003-05 AGP Policy Element.

the District Council must first make its own evaluation as to the adequacy of public facilities in a rezoning case, because the Council has primary responsibility to determine whether the reclassification would be compatible with the surrounding area and would serve the public interest. The Council's evaluation of public facilities at the zoning stage is particularly important because of the discretionary nature of the Council's review, and the fact that the Council's review is much broader at the zoning stage than what is available to the Planning Board at subdivision, a process designed to more intensively examine the "nuts and bolts" of a development. The District Council is charged at the zoning stage with determining whether the proposed development would have an adverse impact on public facilities and, if so, whether that impact would be mitigated by improvements reasonably probable of fruition in the foreseeable future.

1. Transportation

Under the 2003-05 AGP Policy Element, which remains in effect, subdivision applications are subject to only one transportation test, Local Area Transportation Review ("LATR").⁸ The Planning Board recognizes its LATR Guidelines as the standard to be used by applicants in the preparation of reports to the Hearing Examiner for zoning cases. LATR Guidelines at 1. LATR involves a traffic study intended to evaluate whether a proposed development would result in unacceptable congestion at nearby intersections during the peak hours of the morning and evening peak periods (6:30 to 9:30 a.m. and 4:00 to 7:00 p.m.).

The Applicants performed a traffic study as required in this case, taking into account existing roads, programmed roads and available or programmed mass transportation, as well as existing traffic, traffic anticipated from nearby development that is approved but unbuilt ("background" traffic), and trips expected to be generated by the proposed development. The traffic study anticipated no new trips from the Vedanta Center expansion, because the Center does not

⁸ See 2003-05 AGP Policy Element at 6-7; *Local Area Transportation Review Guidelines Approved and Adopted July 2004* ("LATR Guidelines") at 1. The Hearing Examiner hereby takes official notice of the LATR Guidelines.

have activities during the morning and evening peak hours. With 38 new dwelling units, the proposed development is expected to generate a total of 33 additional trips during the weekday morning peak period and 41 additional trips during the weekday evening peak period. The traffic study concluded, and Technical Staff agreed, that with the proposed development in place, critical lane volumes ("CLVs") at the key intersections studied would remain below the CLV standard of 1,500 for the Aspen Hill Policy Area. See Ex. 27(c) at 19; Transportation Staff Memo attached to 2006 Staff Report ("2006 Transportation Staff Memo").

The traffic study was prepared based on the premise that the Vedanta Center would not generate any peak hour trips, because the Center does not have activities during the morning and evening peak hours. Transportation Planning Staff recommended that the local map amendment be limited to the 39 dwelling units proposed and a 6,000± square foot expansion of the Vedanta Center, and that the rezoning "[l]imit activities associated with the house of worship to exclude programs that would generate peak-hour vehicular trips within the weekday morning and evening peak periods, such as a weekday child daycare facility or private school." 2006 Transportation Staff Memo at 2. The Development Plan now proposes to expand the Vedanta Center by up to 6,500 square feet, a relatively minor increase above the size recommended by Transportation Planning Staff. The more significant item is the recommendation to "limit" the local map amendment by prohibiting the Vedanta Center from adding a child day care facility and/or a school to its operations. Imposing such a limitation would risk running afoul of the prohibition against conditional zoning that was developed by the courts and is stated in Section 59-H-6.4 of the Zoning Ordinance. In a zone that is eligible for the optional method of development under Section 59-H-2.5, the legal parameters are different, because the Zoning Ordinance expressly provides that an applicant for rezoning who elects the optional method of application may choose to limit the uses to be conducted on the site. No such provision exists for the PD Zone, which is not eligible for the optional method of application.

The Hearing Examiner does not view Transportation Staff's reliance on the recommended condition as fatally undercutting Staff's overall recommendation. The entire construct of the PD Zone, including the purpose clause and the development standards, is based on the premise that the development must be coordinated, integrated, and approved in its entirety by the District Council. The addition of a new use such as a child day care facility or a private school would require a Development Plan Amendment approved by the District Council, which would give Technical Staff and the District Council the opportunity to consider the traffic impacts of the use at that time. Thus, the condition Transportation Staff recommended is unnecessary to justify the traffic generation assumed in the traffic study. Moreover, Transportation Planning Staff notes that the addition of a new traffic generator would require a separate APFO review. See 2006 Transportation Staff Memo at 2.

One week after the date of the 2005 Transportation Staff Memo, the State Highway Administration ("SHA") submitted a comment letter to Transportation Planning Staff recommending a substantial expansion of the traffic study. SHA noted that according to the submitted traffic study, 70 percent of the site-generated traffic is expected to use either MD 97 (Georgia Avenue) at Connecticut Avenue or MD 97 at Bel Pre Road, and 25 percent is expected to use the MD 182 (Layhill Road)/Bonifant Road intersection. SHA recommended that the applicant be required to add an analysis of these three intersections to its traffic study. See letter from Steven D. Foster to Shahriar Etemadi dated October 10, 2005, attached to 2005 Staff Report.

Technical Staff rejects SHA's recommendation, noting that it would go well beyond LATR requirements, which direct an applicant to analyze only the first signalized intersection in each direction, if the weekday peak-hour trips are between 30 and 250. Staff notes that SHA did not provide a reason for the extra analysis it recommends, that the three intersections listed are each roughly a mile from the subject site, and that the practical impact of the proposed development would be very small, considering the scale of the intersections (the proposed

development would add a total of 29 trips to the two Georgia Avenue intersections, and 11 to the Layhill Road intersection). See Ex. 43.

During the first hearing, the Applicant's transportation planner, Wes Guckert, described Homecrest and Bel Pre Roads and explained the basis for his opinion that the proposed access points would be safe, adequate and efficient. He stated that north of proposed Road A (the access point closer to Bel Pre Road), Homecrest Road is a two-lane roadway about 20 to 21 feet wide. From Road A south to Bel Pre Road, Homecrest Road widens to three lanes, about 37 feet wide, with two southbound lanes approaching the traffic signal at Bel Pre Road. Mr. Guckert noted that the Master Plan describes Homecrest Road as a secondary road, but it is posted with a speed limit of 25 miles per hour ("MPH"), indicating that it functions as a tertiary road. Road A is proposed to line up with the driveway entrance for the senior housing across Homecrest Road. Road C is shown adjacent to the northern property line.

Mr. Guckert stated that Bel Pre Road at this location is a five-lane roadway, with two through lanes in each direction plus a center turn lane. He noted that it has approximately 57 feet of pavement, which is slightly below the typical 60-foot standard for a five-lane road. Instead of five 12-foot travel lanes, Bel Pre Road has one lane that is 11 feet wide, and a ten-foot-wide center turn lane. The posted speed limit is 35 MPH. The proposed Development Plan shows one access point on Bel Pre Road, about midway between Homecrest Road and the next road to the east, Beaverwood Lane.

Mr. Guckert reviewed sight distance measurements for each of the proposed access points and concluded that all meet or exceed county standards, with two requirements to ensure adequate sight distance at the Bel Pre Road entrance: (1) a utility pole near the proposed entrance might have to be moved north, into the site, by about five feet; and (2) heavy vegetation near the proposed entrance, on the subject site, would need to be cut back. The required sight distance at each location and Mr. Guckert's sight distance measurements are shown in the table that follows.

Sight Distance Measurements

Access Point	Sight Distance Required	Sight Distance As Measured by Guckert	
		Right	Left
Bel Pre Road	400 ft.	530 ft.	550 ft.
Road A	250 ft.	747 ft.	290 ft.
Road C	250 ft.	255 ft.	824 ft.

Mr. Guckert explained that under standards used in Montgomery County and elsewhere, sight distance is measured at a driver's eye level – 3 ½ feet off the ground, six feet back from the edge of the road, looking at an object about 2 ¾ feet down the road. He further stated that he applied the sight distance requirement for a 35 MPH speed limit to Homecrest Road because that is the speed limit for the roadway classification recommended in the Master Plan. He noted, however, that the road is actually posted for 25 MPH, indicating that the government believes that is the speed people should drive. At that speed, the required sight distance would be only 200 feet, which the Road C access point can easily satisfy.

Mr. Kauffunger testified about his own sight distance measurements and presented written evidence indicating that he followed standard Montgomery County procedures. See Ex. 49. He testified as a lay person, but stated that he is trained as a scientist, and that he learned how to do traffic studies and measure sight distances from Dr. Everett Carter, who was a professor in the highway engineering department at the University of Maryland (Mr. Guckert confirmed Dr. Everett's position with that institution). Mr. Kauffunger stated that he has a long history of working on traffic problems; he collected the information necessary to justify a traffic light at the intersection of Homecrest and Bel Pre Roads, and he spent several years persuading the County to put a stripe down the middle of Homecrest Road.

Mr. Kauffunger found that the sight distance at the proposed Bel Pre Road access point "technically met the standards," but only during cold weather months, when deciduous plants don't have their leaves. He measured the sight distance at the Road C access point at 248 feet, just shy of the required 250 feet. Mr. Kauffunger based his measurements on a speed of 35 MPH, based on information he obtained from DPWT indicating that the 85th percentile speed on

Homecrest Road (the speed which 85 percent of people drive at or below) is between 34 and 39 MPH.⁹ Mr. Kauffunger contended that the County's methodology for measuring sight distances is flawed, because it is neither highly accurate nor highly reproducible. He argued that many cars travel above 35 MPH on Homecrest Road and that because of a hill north of the proposed Road C access point, cars exiting Road C would not be able to see fast-moving southbound traffic on Homecrest Road soon enough to stop. Several community members supported this argument with similar observations.

Mr. Guckert suggested that Mr. Kauffunger might have gotten a different measurement at the Road C access point because he was six and a half feet back from the curb rather than six feet. He emphasized, moreover, that he does not consider the difference between 238 feet and 255 feet to be significant in this context. Mr. Guckert noted that sight distance measurements of this nature are not done with the absolute precision of a survey measurement, and that formal sight distance certification takes place at a much later stage of development, based on the actual road profile.

Mr. Guckert agreed that the hill on Homecrest Road limits sight distance to the north, and opined that the speed limit was set at 25 MPH because of that hill, to encourage cars to travel more slowly. He suggested that Homecrest Road might benefit from some traffic calming measures, such as a flashing speed limit sign.

At this preliminary stage, without actual road profiles and final grading, the Hearing Examiner is persuaded by the preponderance of the evidence that sight distances are adequate to support the zoning request. The more authoritative of two measurements founds that all sight distances meet county standards, and even Mr. Kauffunger found only a deficiency of less than one percent of the required distance. Moreover, Road C is the least important of the three proposed access points for purposes of this development (setting aside, for the moment, the question of

⁹ As observed by Mr. Guckert, the "85th percentile speed" normally is expressed as a single number, not a range.

Master Plan compliance). If DPWT were to make a decision at a later stage that Road C cannot be built safely at this location, that would not make safe access to this development from Homecrest Road impossible, it would merely require some site redesign. The Applicants would not be relieved of their dedication obligation, which would preserve the land for later use in the event that future development warrants its use to meet the Master Plan's goals. Another possibility might be designing a single access point on Homecrest Road, near the middle of the subject property's western boundary, which would lead to Road B. From there cars could turn right to reach the southwestern part of the community, or left to reach the northern parts of the community. A change of that nature, of course, would require a development plan amendment approved by the District Council. In any event, it is extremely unlikely that sight distance problems would pose a serious obstacle to implementing this Development Plan.

2. Water and Sewer

The subject property is served by public water and sewer. Technical Staff reports that local service is considered adequate and the impact from rezoning would be negligible.

3. Schools

Technical Staff reports, based on information provided by Montgomery County Public Schools ("MCPS"), that the subject property is in the Bel Pre Services Area of the Down County Consortium, which has adequate capacity according to the AGP formula. See Supplemental Staff Report, Ex. 33. The Hearing Examiner takes official notice of the determination by the Planning Board, on July 6, 2006, that under the current AGP Policy Element, for purposes of reviewing subdivisions in FY2007, all school clusters in the County are considered to have adequate capacity.

Based on the preliminary unit mix, Montgomery County Public Schools ("MCPS") expects the proposed development to generate approximately 9 elementary, 6 middle and 7 high school students. See Ex. 33. MCPS data indicate that Bel Pre and Strathmore Elementary

Schools are paired schools, which have limited capacity, and that both Argyle Middle School and the high schools in the Downcounty Consortium have capacity.

Thus, in this case both the AGP test and estimates from MCPS indicate adequate capacity for the small number of students that would be generated by this project.

I. Support for the Application

The record contains a letter of support for the earlier Development Plan from Rocky Lopes, President of the Bel Pre Estates Homeowner's Association, which represents a community of approximately 18 houses located a short distance east of the subject site on Bel Pre Road. Mr. Lopes also testified at the first hearing. Both his testimony and his letter demonstrate that the Bel Pre Estates HOA is very pleased with the major revisions that J. Kirby Development has made to the proposed residential development during the pendency of this application, and approves of the current Development Plan. Elements the HOA finds particularly positive are locating the single-family detached homes along an interior road, facing one another, to create a sense of community; locating Road A far enough from the intersection of Bel Pre and Homecrest Roads to be safe; and placing the MPDUs in buildings that will look like the other homes in the neighborhood.

The Bel Pre Estates HOA very much looks forward to the day when Road C will be extended to connect with Big Bear Terrace, a stub road within Bel Pre Estates. This would provide the community with a second means of access, and a way to enter Bel Pre Road at a signalized intersection.

Mr. Kirby testified that he had numerous meetings with the Bel Pre Estates HOA and the much larger HOA for the Layhill Alliance. Tr. Nov. 4 at 247-48. Applicants' counsel stated that a spokesperson for the Layhill Alliance testified in support of the project before the Planning Board. The record contains an email from Mr. Lopes (who is President of the Layhill Alliance as well as of the Bel Pre Estates HOA) to Technical Staff providing the text of comments which, after "resolving dissension and achieving consensus," a spokesperson for the Layhill Alliance would be making before the Planning Board. See email dated October 20, 2005, attached to Ex. 60(d). Those

comments stated that while at least one member community in the Layhill area remained concerned about the housing density shown on the Development Plan at the time of the 2005 hearing, other member communities felt that the plan under consideration at that time was a big improvement over the original plan, and therefore the Layhill Alliance was “not opposed to this development.” *Id.*

Mr. Lopes submitted an additional letter after the original hearing, on behalf of the Layhill Alliance. See Ex. 63(a). This letter stated that the Layhill Alliance serves the homeowner, civic and community associations in the greater Layhill area of Silver Spring, and currently has nine member associations representing 3,356 households.

Mr. Lopes submitted one last letter in April 2006, also on behalf of the Layhill Alliance. See Ex. 79. He reiterated that the Layhill Alliance is “not opposed to the development,” but articulated some specified concerns: (1) his organization suggests a landscape buffer along the parking lot of the Vedanta Center, to provide visual screening between the parking lot and Bel Pre Road; and (2) the Layhill Alliance agrees with the proposal to give the HOA responsibility for maintaining landscaping along the western edge of parcels abutting Homecrest Road, so that individual homeowners cannot remove trees or other landscaping, and to allow a more even, stable visual appearance.¹⁰

J. Community Participation

Six community members testified at the first hearing regarding their concerns about certain elements of the proposed Development Plan: Mr. Kauffunger; Joe Podson, manager of Homecrest House, a 280-bed facility for low income seniors and disabled people located diagonally across Homecrest Road from the subject site; Wayne Courtney, representative of the Wheaton Moose Lodge adjacent to the east; Linda Nishioka and her father, Laurence Andrews, who has

¹⁰ Mr. Lopes also raised two concerns related to the depiction of Road C on the first revision of the Development Plan after the remand. At that point, no homes were proposed in the northeast section of the site, and Road C was planned to terminate at the end of the last lot on Road B. These comments are moot, given that Road C is now proposed for construction along the entire northern property line.

lived across Homecrest Road from the subject property since 1951; and Max Bronstein, representative of the Strathmore-Bel Pre Civic Association.

Mr. Courtney's comments addressed a potential incompatibility between the sometimes noisy social activities of the Moose Lodge and the close proximity of the proposed duplex units. On the Development Plan presented at the first hearing, the closest row of duplex units was depicted about 35 feet from the Moose Lodge building, and closer than that to the property line. Mr. Courtney stated that his organization sometimes has large social gatherings with outdoor activities and large numbers of cars. He suggested that these activities would present problems with residents living so close to the property line. The duplexes have since been moved farther west, separated from the Moose Lodge Property by an existing wooded area about 77 feet deep. The closest duplex is now shown approximately 112 feet from the closest corner of the Moose Lodge building. The Moose Lodge did not comment on the revised Development Plan.

Mr. Podson noted that some people reside at Homecrest House for 15 to 20 years, and many work, volunteer, drive and consider themselves part of the neighborhood, so the visual appeal of the area is important to them. He did not participate in the remand hearing, but submitted a letter on May 1, 2006 (before submittal of the current Development Plan) reiterating that putting up a "tight 'wall' of houses would give a feel of row homes," rather than a street that is pleasant to look at and continues the open feel of the block and neighborhood. See Ex. 83. He suggests that the "zig-zag" approach on much earlier versions of the Development Plan, which showed houses facing Homecrest Road, should be adopted (this approach was rejected by Technical Staff due to concern that the new development would lack a sense of community). Failing that, he suggested a long berm along Homecrest Road to block the view of the houses, or at least trees tall enough to hide the back ends of the homes. Mr. Podson did not comment on the current Development Plan.

Mr. Kauffunger, Mr. Andrews, Ms. Nishioka and Mr. Podson voiced a shared concern at the first hearing about the number and closeness of the homes proposed along Homecrest Road.

Mr. Kauffunger made a very detailed presentation including an alternative development plan, many of whose features are part of the current Development Plan.

During the first hearing, Mr. Kauffunger testified in detail about the importance of Road C in fulfilling the objectives of the Master Plan. He argued that the 50-foot dedication shown on the Development Plan would not be adequate to build a secondary road, as recommended in the Master Plan, so a dedication of at least 60 feet should be provided. To solve a potential sight distance problem at the access to Road C, Mr. Kauffunger suggested building Road C partially on property owned by the adjacent Aspen Hill Club, which is past the bump in the road that hinders the line of sight.

Mr. Kauffunger, Mr. Bronstein, Mr. Andrews and Ms. Nishioka testified again at the remand hearing, and Mr. Kauffunger and Ms. Nishioka again asked numerous questions of the Applicant's witnesses. Ms. Nishioka made written submissions immediately before and after the remand hearing, see Exs. 75, 94 and 116, as did Mr. Bronstein, see Exs. 84, 90 and 114, and Mr. Kauffunger, see Exs. 81, 90, 97 and 115.

Mr. Bronstein, speaking on behalf of himself and the 800-home Strathmore Bel Pre Civic Association, raised several issues. First, he objects to the Applicant's decision to group all of the MPDUs in one location, rather than dispersing them throughout the site. He suggested that the location of one of the three-unit MPDU buildings be switched with that of a single-family detached home, to integrate the MPDUs better into the community. See Ex. 101. Second, Mr. Bronstein argued that the Master Plan's "green corridor" recommendation requires a grassy strip and street trees not just along the subject property's Bel Pre Road frontage, as shown on the Development Plan, but also between the sidewalk and the roadway. He described this as a safety feature as well as an environmental improvement, in light of the high speeds motorists use on Bel Pre Road.

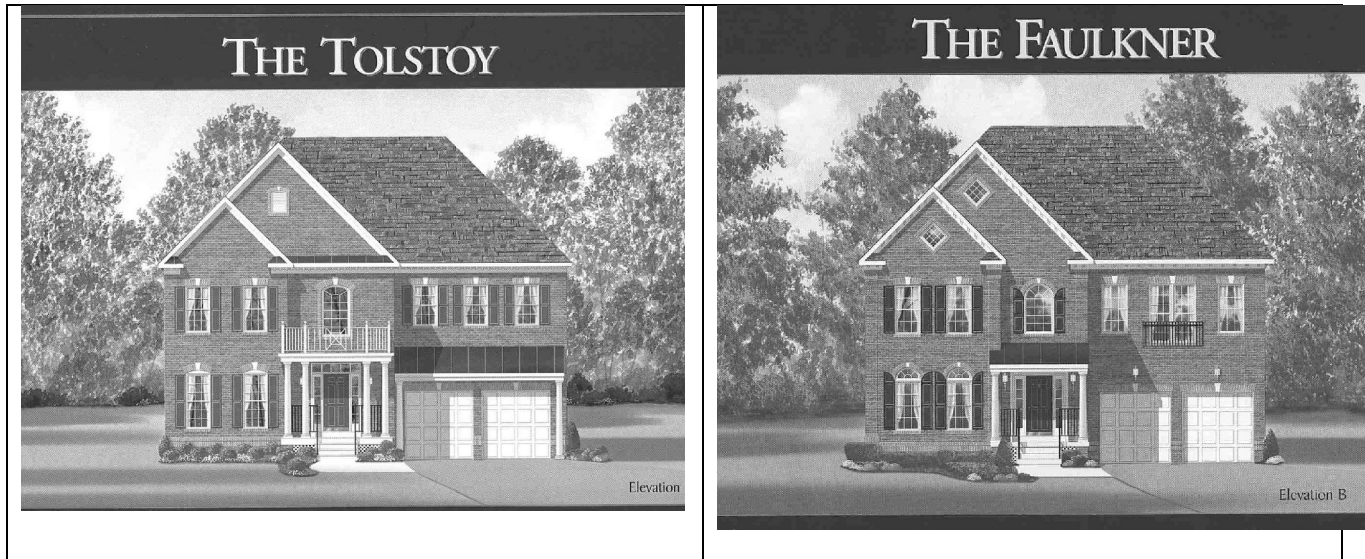
Third, Mr. Bronstein maintained that the reforestation area along Homecrest Road should have evergreens along the road frontage, to provide winter-time screening, and should exclude non-native and invasive species. These elements are now specified on the Development

Plan, which was subject to minor revisions after the remand hearing. Fourth, Mr. Bronstein raised a question about the legality of the Vedanta Center's plan to restrict the occupancy of the duplex units to persons who worship at the Vedanta Center. As noted on page 20, n. 4, the District Council is not making a judgment as to the legality or appropriateness of any such covenants in making a decision on this application. Finally, Mr. Bronstein requested that the Development Plan specify a maximum height for the cupolas and domes on the new Vedanta Center building, as well as for the building itself. This has been added to the Development Plan, although the Applicant chose to allow 20 feet for the cupolas and domes, rather than the 14 feet that Mr. Bronstein reported was described before the Planning Board.

Mr. Kauffunger, speaking on behalf of himself and the 15-member Layhill Citizens' Alliance, also raised several issues. First, he offered suggestions for how to overcome some of the logistical problems that the Applicant raised in response to Mr. Bronstein's suggestion to switch the location of one of the MPDU buildings. He then discussed his continuing concerns about the Master Plan compliance of Road C, along the northern property line, which is proposed with right-of-way widths somewhat narrower than those recommended in the Master Plan. Mr. Kauffunger also stressed that he believes street trees between the sidewalk and the roadway along Bel Pre Road are necessary to satisfy the Master Plan's "green corridor" recommendations.

Ms. Nishioka made an extensive, passionate presentation in opposition to the proposed site layout. She continues to believe that the homes shown along Homecrest Road would be too close together, and that because of their height, bulk, and failure to follow the contours of the land, they would be out of character with Homecrest Road. Because the topography makes the corner of Bel Pre and Homecrest Roads visually prominent, Ms. Nishioka believes that whatever is built at that location will define the neighborhood. She observes that the current Development Plan does not provide finished floor elevations, leading her to suspect a plan to raise the elevation of the corner site even further than the natural topography.

Ms. Nishioka objects to the design of the “Tolstoy” and “Faulkner” models identified on the Development Plan, examples of which are shown below from a Ryan Homes brochure, part of Ex. 116(a). She feels that the height and bulk of these homes is out of character with Homecrest Road.



Ms. Nishioka argues that any development on the subject site should be consistent with the character of the existing uses on Homecrest Road that are permitted by right, and that compatibility should not be judged based on the many, many special exceptions in the surrounding area. The neighborhood is host to a number of special exceptions: the Aspenwood Senior Living Community, Homestead House, the Aspen Hill Club, the Vedanta Center, the Moose Lodge and a child day care center. Ms. Nishioka believes it is unfair for the County to have imposed so many special exceptions on this neighborhood, and then to allow the development proposed here because it would be compatible with the special exceptions. Unlike the special exceptions, she notes, the proposed development would not be buffered by large setbacks, berms and extensive landscaping (Ms. Nishioka seemed quite skeptical that the reforestation area would provide any meaningful screening, at least in the short run).

Ms. Nishioka echoed other witnesses' call for street trees between the sidewalk and the road along Bel Pre Road, to implement the Master Plan's "green corridor" recommendation and

the purpose of the PD Zone to provide for the “maximum safety, convenience and amenity” of residents of the proposed development and neighboring areas.

Mr. Andrews testified that the current Development Plan shows some improvement, but his basic objection to the visual impact remains unchanged. He expects that the proposed development would look like row houses, and would be totally out of character with the rest of Homecrest Road.

Three community members who did not appear at the first hearing testified at the remand hearing. Pat O'Neill, a resident of Homecrest Road, testified that due to a blind spot on Homecrest Road, an entrance road should not be permitted at the location shown for Road C on the Development Plan. Keith Smith, a resident of Legendary Court, just north of the Aspen Hill Center, confirmed Ms. O'Neill's testimony about sight distance problems on Homecrest Road. Danielle Bouchard, general manager of the Aspen Hill Club, requested time after the hearing to submit a letter. In her subsequent letter, the Aspen Hill Club requests that the proposed development be required to include the kind of landscape buffering and berming that the Board of Appeals required when the Aspen Hill Club obtained approval for its special exception. See Ex. 113. The letter adds that the Aspen Hill Club does not support joint access from Homecrest Road with the proposed development, but requests that the Applicant be required to dedicate property north of Road C to provide for such access, in the event it becomes necessary. The Hearing Examiner notes that the strip of land between Road C and the northern property line is shown encumbered with a public utility easement, which may be inconsistent with a roadway dedication.

In addition to the several community members who participated in the hearings in this case, the record contains a long, detailed letter from Sara P. O'Neill, an architect with the firm of O'Neill & Manion Architects. See Ex. 77. She states that she represents the interests of two of the homeowners that front on Homecrest Road, who own three lots, although she does not identify the lots or the owners. Ms. O'Neill reviewed the history of land use in the neighborhood, which was originally a large farm that was subdivided into five-acre lots for homeowners seeking a rural

setting. She states that Homecrest Road was privately maintained as a dirt road until well into the 1960s. Shortly after Homecrest Road was paved, Ms. O'Neill reports, Leisure World was developed, with lots of promises that were not kept about green buffers and keeping Homecrest Road as a dead end. During this period, Bel Pre Road was widened and other farms in the area were subdivided into one-half and one-quarter acre lots for suburban-style development. At some point, the Master Plan recommendations for the area changed from low-density, green wedge to higher-density housing. Rezoning resulted in some smaller lots, and institutions purchased many of the larger lots, which were developed with retiree housing and the Aspen Hill Club.

Ms. O'Neill notes that although the Master Plan recommends PD zoning, there is no precedent for applying the PD Zone in this neighborhood. She reviews the evolution of the present application, which began as a proposal for another housing complex for seniors, then proposed a looser arrangement of homes along Homecrest Road, then moved, at the urging of Technical Staff, to a "grid of tightly packed homes at the corner of Homecrest and Bel Pre." She argues that there has been an unfortunate history of master plans being ignored and promises broken in this neighborhood that has adversely affected the quality of life in the community, and this rezoning would add to that list.

Ms. O'Neill makes ten suggestions for improvement of the Development Plan, many of which would require extensive revision of the Development Plan, or a completely different approach to the use of the subject site. Ms. O'Neill's letter indicates that a copy was sent to Technical Staff in April, 2006, which should have allowed time for these suggestions to be considered during the formation of the Development Plan that was submitted in July. There is no indication in the 2006 Staff Report as to whether Ms. O'Neill's letter was considered or discussed during that process, nor is there any indication whether Ms. O'Neill had the opportunity to review the Development Plan that was submitted in July and is now before the District Council. Ms. O'Neill's principal suggestions and comments are summarized below, although some of her concerns may have been resolved on the current plan.

1. A deceleration lane should be required for the right hand turn into Homecrest Road from westbound Bel Pre Road. This would require a 40- to 50-foot dedication along part of the subject site's Bel Pre Road frontage.

2. The sidewalks along Homecrest and Bel Pre Roads should be separated from traffic with a planting buffer. This would require additional setback space on the subject site.

3. A clearly marked utility easement should be provided [this is shown on the current Development Plan].

4. The "unique position of this neighborhood as part of the headwater origins of both the Northwest Branch and Rock Creek needs to be acknowledged." Denser development leads to more polluted run-off, more impervious surfaces and less opportunity for water percolation and recovery. The more grading is altered and large trees are removed, the more silt is released into downstream waterways and storm drainage systems. The County needs to decide "how forward-looking it needs to be in its decisions for water quality into the next century and beyond."

5. The current style of development, clearing a site and paying no attention to natural site contours, has nothing to do with the original Bel Pre Farms, which was based on conserving green areas around waterways and marshlands, and providing interspersed parkland. "The proposed tight side yard, large houses on small urban lots with no space for tree and shrub relief, compounded by the houses facing inward and not outward, make a very unfriendly compound dropped into a large-lot suburban setting."

6. Homes should be developed ringing the ravine, to take advantage of its natural beauty. [The Applicant now proposes six homes overlooking the ravine.]

7. The homes along Homecrest Road should face the road. Having the homes face inward does nothing to foster a sense of community with the existing neighbors.

8. The development as proposed is a missed opportunity for a better community and neighborhood. It is a self-contained urban development with no sensitivity to the topography, the fragile watershed, the original neighborhood or the history of the local community. With a land-

sensitive approach, the architecture could turn to lower-scaled houses that would relate well to a wooded, rolling site, and to the surrounding, lower-scaled suburban developments.

9. Any future development should provide large-canopy, hardwood street trees such as Willow Oaks along Homecrest Road, which, before it was widened, was lined with specimen oaks and other hardwood trees. If the new homes remain facing inward, a well-planted, high buffer should conceal the rear facades. The buffer should have high-quality, durable plants and hardwood canopy trees, not white pines or other inexpensive species that typically are short-lived and unattractive.

10. Road C should be built whether or not the site is rezoned, and the entrance to the Aspen Hill Club should be combined with the new road, using a divided entry with a heavily planted median to create an upscale presence. All-way stops and rumble strips should be used, and large speed bumps or traffic circles should also be considered to slow down the traffic.

IV. SUMMARY OF HEARING

A. Applicant's Case in Chief

Testimony provided at the remand hearing is summarized below. See Hearing Examiner's Report and Recommendation of February 6, 2006 for summary of November 4, 2005 hearing.

1. Scott Wolford, architect. Tr. Aug. 8 at 6 – 67.

Mr. Wolford was designated an expert in land planning. He testified that his firm has been involved in the site planning process for this project since its inception. He described the changes to the Development Plan between the initial close of the record in this case and the post-remand hearing date, comparing Exhibit 28(a), dated October 14, 2005, with Exhibit 91(a), dated July 3, 2006. He summarized the changes as follows:

(1) On the earlier Development Plan, the lot lines for the duplex units in the southeast corner of the site abutted the property line of the adjacent Wheaton Moose Lodge. On

the current plan, these units have been moved away from the property line, and are separated from the Moose Lodge property by a substantial forested buffer, 77 feet deep, to be protected by a Category One Forest Conservation Easement. This forested buffer area is designated on the Development Plan to be conveyed to the future homeowner's association. The distance between the property line and the dwelling lot lines is shown at 77 feet, the depth of the buffer area. The distance between the closest dwelling and the closest corner of the Moose Lodge building is shown at 111 feet.

(2) Mr. Wolford described the proposed dwellings as better dispersed across the property. Where the earlier plan showed 10 single-family detached homes and three single-family attached MPDU units adjacent to Homecrest Road, the current Development Plan shows seven single-family detached homes and a reforestation area measuring 0.63 acres. Moreover, the homes adjacent to Homecrest Road have been pulled back 15 feet farther from the roadway, increasing the rear yard setbacks.

(3) The Development Plan provides for a permanent, 20-foot landscaping strip along Homecrest Road, to be maintained by the HOA. Mr. Wolford indicated that the developer intends to try to use large trees and native species. The idea, as he described it, is to avoid a patchwork of rear yards and landscape treatments across that road frontage by creating a common element and putting it under a single maintenance responsibility. Tr. Aug. 8 at 13. As part of maintaining an attractive appearance along that frontage, residents in these homes would not be permitted to have sheds in their rear yards.

(4) The earlier plan showed Road C, along the northern property line, with a 50-foot right-of-way extending from Homecrest Road to point about a third of the way back along the property line, where the houses ended. On the current Development Plan, Road C extends for the entire length of the northern property line, and six single-family residences are shown along that road in the northeast corner of the site. In addition, the width of the right-of-way has been increased to 60 feet from Homecrest Road to the intersection with Road B, the proposed internal

road parallel to Homecrest Road. At that point, the right-of-way tapers down to 50 feet. This wider right-of-way is intended to accommodate the possibility of a future connection from Road C to the adjacent Aspen Hill Club property, as contemplated in the Master Plan. Tr. Aug. 8 at 18-19.

(5) MPDUs were shown on the earlier plan in the southwest corner of the site, adjacent to both Homecrest and Bel Pre Roads. On the current Development Plan, Mr. Wolford noted, the MPDUs are still in two buildings with three units each, but they are separated from Homecrest Road by two single-family detached homes. They remain adjacent to Bel Pre Road, but would no longer be visible from Homecrest Road. Mr. Wolford stressed that Applicant proposes the MPDUs in two groups of three so that each of the buildings would have the bulk, mass and look of a large, single-family detached home, similar to the other homes in the community. Tr. Aug. 8 at 20.

Mr. Wolford observed that where there are three detached residences along the west side of Homecrest Road, the Applicant now proposes four single-family detached residences and a forested area along on the east side of the road. Mr. Wolford characterized this as a better match for existing conditions in the neighborhood than the earlier plan, which proposed eight single-family detached homes along the same stretch of road. Tr. Aug. 8 at 12-13. He also noted that the number of homes on the five-acre parcel abutting Homecrest Road has been reduced from 26 dwelling units to 20. *Id.* at 15.

Mr. Wolford described in some detail the extensive landscaping and streetscape proposed along Homecrest Road. Applicant proposes to dedicate land along Homecrest Road to provided for 35 feet of right-of-way between the property line and the center line of the road. Moving from the edge of the road towards the site, the Development Plan shows a grassy strip with street trees, then a sidewalk, then the right-of-way line, then a ten-foot landscaping strip owned by the HOA and, along all of the residential lots, an additional ten-foot landscaping strip covered by an easement to allow HOA planting and maintenance. Tr. Aug. 8 at 14-15. The Development Plan shows primarily shrubs in the HOA-owned landscaping strip, and evergreen and shade trees in the landscaping strip inside the residential lots. No landscaping easement is proposed along the parcel

designated for reforestation, which is to be conveyed to the HOA, because it would already be covered by a forest conservation easement.

Mr. Wolford described existing land uses in the surrounding area, using a series of photographs. He pointed out Homecrest House, a community of five-story residential buildings diagonally across Homecrest Road from the subject site to the north (testimony and photographs demonstrated conclusively that these buildings are very well buffered, and are barely visible from the street or neighboring lots); the extensive Aspen Hill Club facilities adjacent to the north; the Aspenwood Senior Living Community and Assisted Living Facility on the northwest corner of Homecrest and Bel Pre Roads, which starts off with one story close to Homecrest Road and increases to three and four stories farther back; the Strathmore House Apartments on the southeast corner of Homecrest and Bel Pre Roads, consisting of 300-foot-long, three-story brick buildings (Mr. Wolford conceded that the buildings angle away from Bel Pre Road, so their full size is not apparent from the street); a townhouse community on the south side of Bel Pre Road, confronting the eastern two-thirds of the subject site, which has three-story townhouses with two-car garages; and dense vegetation in the forested buffer area proposed between the duplex units and the Moose Lodge property.

Finally, Mr. Wolford opined that the present application, with the latest revisions, conforms to the requirements of the PD Zone. Tr. Aug. 8 at 32.

On cross-examination, Mr. Kauffunger asked Mr. Wolford how the “green corridors” recommendation in the Master Plan would be met along Homecrest and Bel Pre Roads. Mr. Wolford stated that along Homecrest Road, the Development Plan satisfies this recommendation by providing a roadway dedication, a grassy strip with street streets, and a sidewalk. Tr. Aug. 8 at 39. On Bel Pre Road, Mr. Wolford stated that Applicant plans to replace broken sections of sidewalk, add handicapped-accessible sidewalk ramps and striped crosswalks at the intersections, trim the trees back from the edge of the sidewalk, and plant street trees along the edge of the subject property for a continuous “landscape statement” (except where a forested area is to be preserved in

the southeast corner). Tr. Aug. 8 at 42. He confirmed that the Development Plan makes no provision for plantings between the sidewalk and Bel Pre Road, stating that this is because the sidewalk is existing and abuts the curb. [In response to Mr. Kauffunger's request for a textual binding element stating that the development would comply with the Master Plan's "green corridors" recommendation, Applicant's counsel, Scott Wallace, stated that the Applicant is not comfortable with a binding commitment to a recommendation that is stated so broadly; he suggested that the Applicant would be willing to make such a commitment if the Master Plan included a specific development standard for what a "green corridor" consists of. Tr. Aug. 8 at 43-44. Mr. Wallace suggested that changes may be made at site plan if required by Technical Staff.]

In response to questioning by Mr. Kauffunger regarding the location and grouping of MPDUs, Mr. Wolford testified that the Applicant's team considers the proposed location to be the best spot for the MPDUs. He stated that there was considerable discussion before the Planning Board about splitting up the two buildings, but the Planning Board agreed that the size of the development did not lend itself to putting MPDUs in more than one location. Tr. Aug. 8 at 47. He stressed that Applicant is not trying to hide the MPDUs, but plans to place them right up front and make them as attractive as the other homes. He noted that the Applicant had moved the MPDUs away from Homecrest Road in response to indications that the community did not want to see those units at that location, with the side of an end unit facing the roadway.

Ms. Nishioka asked Mr. Wolford what kind of screening the reforestation area proposed on Homecrest Road would provide during the winter months. He stated that the border of the forested area would have a row of street trees 40 feet apart, then a ten-foot strip of landscaping, composed of tall deciduous and evergreen shrubs that should reach a height of six to 12 feet within three to five years, then a row of street trees inside the reforestation area. The reforestation area itself would be a combination of evergreens and deciduous trees, some seedlings and some of other sizes. He stated that a reforestation project is an attempt to mimic nature, so they plant a variety of trees that would normally be found in a wooded area in this part of the State. Tr. Aug. 8

at 59. Some of the plantings, especially in the middle of the parcel, would be “wicks” or seedlings, which are three-to-four-foot spikes. The trees on the edges would be planted as “regular trees in normal sizes,” to quickly create a dense barrier at the edges to keep people out. *Id.* at 60. [The Development Plan was subsequently revised to show a combination of evergreens and deciduous trees along the road frontage of the reforestation parcel.]

Ms. Nishioka requested setback figures for some of the proposed homes. Mr. Wolford testified that the home on Lot 7, at the corner of Bel Pre and Homecrest Roads, is shown 32 feet from the face of curb on Bel Pre Road and 56 feet from the face of curb on Homecrest Road.

In response to questioning about the Applicant’s photograph of Homecrest House, Mr. Wolford conceded that the photograph was taken by someone standing in the access drive to Homecrest House, not from the street.

Ms. Nishioka also asked about the finished elevations expected for the proposed dwellings. Mr. Wolford noted that at this stage, he can provide only a rough estimate for finished elevations. He estimates that the first floor of homes abutting Homecrest Road would be a few feet lower than the grade of the roadway. He did not have estimates for the homes not fronting on Homecrest Road, but emphasized that grading changes represent a huge expense to the developer, so the intent would be to stay as close to the existing grades as possible. Tr. Aug. 8 at 67.

2. John Clapsaddle, civil engineer. Tr. Aug. 8 at 68-70.

Mr. Clapsaddle was designated an expert in civil engineering. His firm prepared the storm water management concept plan and forest conservation plan for the proposed development. He testified that no significant changes were made in the stormwater management plan as a result of the changes in the Development Plan. He noted that two or three bio-retention facilities were added in the middle portion of the site, and another water quality facility was added on the north side of the property, near the Aspen Hill Club. Mr. Clapsaddle further testified that the proposed Development Plan would continue to meet all forest conservation requirements.

B. Community Participation

1. Max Bronstein, Tr. Aug. 8 at 71 – 77.

Mr. Bronstein spoke on behalf of himself and the Strathmore Bel Pre Civic Association, a community of about 800 homes that is located just across Bel Pre Road from the subject site. He described the current Development Plan as a big improvement over various plans presented in the last few years. He noted, however, that improved does not necessarily equate to acceptable – otherwise, developers might be tempted to start with a terrible plan, with the expectation that a later plan that improves on the first one will be accepted, even if the later plan is not a good one.

Mr. Bronstein contended that not all of the deficiencies identified in the Hearing Examiner's report and the District Council's remand have been fully addressed. He focused first on the question of dispersal of MPDUs. Mr. Bronstein quoted the Council's remand resolution, which stated that the site layout would better meet the Master Plan's goal of increasing community interaction and reducing the social and physical isolation of portions of the community if the MPDUs were distributed in more than one location on the site, rather than clumped together in a corner. Tr. at 72-73. Mr. Bronstein offered a solution, which involved switching the location of one of the three-unit MPDU buildings with the location of a single-family detached home shown at the corner of Homecrest Road and Road A. He noted that the building footprints are roughly the same, and that with two doors facing south and one facing east, the visual effect of the MPDUs at the new location could be that of two townhouses. Mr. Bronstein and his organization maintain that this approach would eliminate both the perception and the reality of the MPDUs being segregated from the rest of the community. Tr. Aug. 8 at 73.

Mr. Bronstein also addressed the Master Plan's "green corridor" recommendation, which he believes should apply to landscaping along Bel Pre Road as well as along Homecrest Road. In particular, Mr. Bronstein and his organization argue that a green strip should be placed

between Bel Pre Road and the sidewalk. He described this as a safety feature as well as an environmental improvement, given that motorists on Bel Pre Road “routinely” travel at 50 MPH.

Mr. Bronstein agreed with Ms. Nishioka that the reforestation area on Homecrest Road should have evergreens along the road frontage, to provide winter-time screening, and exclude non-native species and invasive species. He suggested that these points should be in a binding element, which they now are.

Mr. Bronstein raised a question concerning the legality of the Vedanta Center’s plan to use covenants to limit the occupancy of the duplex units, which the Vedanta Center would own, to persons who worship at the Vedanta Center. He stated that Stuart Elkman of the Vedanta Center had assured him that the Vedanta Center’s lawyers would see to it that any instrument dealing with occupancy would be legal. Mr. Bronstein requested that Mr. Elkman reaffirm that statement on the record. Tr. Aug. 8 at 74. [Mr. Elkman did not testify at the remand hearing.]

Mr. Bronstein also addressed the height proposed for the new worship center. He acknowledged that cupolas and domes are exempt from height restrictions, but stated that Applicant’s counsel had represented to the Planning Board that such features would be no more than 14 feet higher than the building itself. He requested that this limitation be specified on the Development Plan, along with the basic 24-foot height limitation for the worship center. [After the remand hearing, the Applicant specified on the Development Plan that cupolas and domes will be no more than 20 feet higher than the roof surface. The figure of 20 feet, rather than 14, was chosen to provide flexibility.]

2. Richard Kauffunger, Tr. Aug 8 at 81–83, 88-108, 113-118.

Mr. Kauffunger is a long-time citizen activist in land use matters, and served on the Citizen’s Advisory Committee for the Master Plan. He participated in the original hearing and the remand hearing on behalf of himself and the Layhill Citizens’ Alliance, a civic group that was formed in 2005 with about 15 individual members from the greater Layhill area.

Mr. Kauffunger first addressed Mr. Bronstein's suggestion regarding switching the location of one of the MPDU buildings. He suggested that the end unit closest to Road B could have its entrance and driveway on Road B, reducing the access points on Road A to two. Alternatively, both end units could be oriented away from Road A – one towards Homecrest Road and one towards Road B. This would leave only one entrance on each side of the building, so the units would look more like single-family homes. Mr. Kauffunger also suggested that the whole building could be moved closer to Road B, to reduce the potential for conflicts between the driveways on Road A and use of Road A as an entrance. He added that if the switch were made, the lot size for the detached home on the corner of Bel Pre Road and Homecrest Road (unit 7) could be adjusted to make more room for an adjacent detached home, and its yards and driveway, on the current MPDU site.

Mr. Kauffunger raised continuing concerns about the access point from Road C (the road along the site's northern property line) to Homecrest Road. He noted that the Master Plan specifically identified a potential traffic safety problem between the proposed access road at the north end of the subject site and the existing entrance for the Aspen Hill Club. He added that the Master Plan recommended building the new road along the northern property line to the standards for a primary residential street, so that it can provide access to the Aspen Hill Club if the two entrances on Homecrest Road are deemed unsafe. Mr. Kauffunger maintained that the Applicant is offering to build a road only to secondary street standards. [Neither he nor, surprisingly, the Applicant's traffic expert had available the figure for what right-of-way is suggested for primary streets.] He contended that this would be inadequate. Tr. Aug. 8 at 107. Mr. Kauffunger noted that the peak traffic hours for the Aspen Hill Club are the same as for general traffic in the area, and there is a heavy flow of traffic in and out. Tr. Aug. 8 at 113.

Mr. Kauffunger stressed, as he did in his questioning of Mr. Wolford, that he believes street trees between the sidewalk and Bel Pre Road are necessary to satisfy the Master Plan's "green corridor" recommendation. Tr. Aug. 8 at 114.

3. Pat O'Neill, Tr. Aug. 8 at 123-24.

Ms. O'Neill is a resident of Homecrest Road. She testified that there is a blind spot in the road, due to a hill, and that an entrance road should not be permitted at the location shown on the Development Plan. She stated that the drop in the road is the size of the height of a car, and that a child was killed on the road years ago.

4. Keith Smith, Tr. Aug. 8 at 124-25.

Mr. Smith resides on Legendary Court, which is off of Homecrest Road just north of the Aspen Hill Club. He added to Ms. O'Neill's testimony about the drop in the road and the blind spot by saying that it is difficult to enter Homecrest Road from his street because the topography rises and falls so rapidly and traffic goes so quickly. He suggested that any road connecting with Homecrest Road could have serious safety issues.

Following Ms. Nishioka's presentation, Mr. Smith testified that the homes in the photographs she presented from a Clarksburg development are similar in style to the homes on his street.

5. Danielle Bouchard, Tr. Aug. 8 at 125-26.

Ms. Bouchard is general manager of the Aspen Hill Club. She requested that the record be held open briefly to allow her to confer with the owner of the club regarding the entrance issue. This was done, and Ms. Bouchard submitted a letter into the record, on behalf of the Aspen Hill Club, requesting that the development proposed for the subject site be required to include the kind of landscape buffering along its property lines that the Aspen Hill Club was required to have when it received special exception approval from the Board of Appeals, in 2003. See Ex. 113. She added that the Aspen Hill Club does not support joint access with the proposed development on Homecrest Road, but requested that the Applicant (and future homeowner's association) be required to dedicate property to the north of Street C for such access, in the event that it becomes necessary in the future.

6. Laurence Andrews, Tr. Aug. 8 at 126-27.

Mr. Andrews has resided across the street from the subject property for over 50 years, and testified during the first hearing that his family plans to stay there for the rest of their lives. Mr. Andrews acknowledged that the Applicant has made considerable changes and some improvements, but his basic objection remains the same, based on the visual impact he anticipates from the proposed development.

Mr. Andrews does not consider it good planning to treat three different lots, with three different owners, as one development, particularly with most of the development on only one of the lots. He compared the development proposed at the subject site with the existing uses on the west side of Homecrest Road: two retirement communities and three detached, single-family homes. Mr. Andrews noted that the Aspenwood Senior Living Community at the south end of his block is “hidden” behind its parking lot, and the Homecrest House building at the north end is completely hidden by tall evergreens. He contrasted this with the development proposed for the subject site, which he described as 30-foot-tall buildings spaced 12 to 15 feet apart, which would look like row houses. Mr. Andrews considers this totally out of character with the rest of Homecrest Road.

7. Linda Nishioka, Tr. Aug. 8 at 126-153.

Ms. Nishioka grew up in a house across Homecrest Road from the subject property, where her father, Laurence Andrews, still resides. She testified that she currently spends about 50 percent of her time at her father’s home. Ms. Nishioka called the present plan “a step in the right direction.” Tr. Aug. 8 at 127.

Ms. Nishioka echoed Mr. Kauffunger’s opinion that the “green corridors” recommendation in the Master Plan calls for a green planting strip between the sidewalk and the street on Bel Pre Road. She noted that Bel Pre Road is a five-lane, high-speed road, and it is not safe to have the sidewalk directly up against it. When it snows, she added, snow is piled up on the sidewalk, so people have to either walk in the street or not walk at all. With two retirement homes

nearby, there are many local residents who do not drive, so walking is very important for them. Ms. Nishioka recounted a conversation she had with the manager of the Aspenwood Senior Living Community, who said that many of their residents use walkers or other walking aids, and they have trouble passing on the sidewalk because they are afraid of toppling into the road. In addition, some wheelchairs can't pass on the narrow sidewalk. Ms. Nishioka also noted that this location is less than a mile from a public school, so many children use the sidewalk as well. She opined that it would be consistent with the purpose of the PD Zone to provide for "the maximum safety, convenience and amenity" of residents of the development and neighboring areas to provide a safe sidewalk along Bel Pre Road in connection with this development. Tr. Aug. 8 at 130.

Ms. Nishioka used a copy of the Development Plan to highlight the topographic features of the site. She observed that the portion of the site at the corner of Homecrest and Bel Pre Roads is a high area, making it visually prominent. The elevation at that location is 440, whereas moving west on Bel Pre Road, the elevation drops to 400 and even 395. Going north, up Homecrest Road, the elevation drops slightly, then crests at 445 at the blind spot referred to by other witnesses. The road drops again as it goes past the Aspen Hill Club, and crests again just beyond Legendary Drive. As a result of this topography, Ms. Nishioka noted, the tall rise of the road cuts off the view towards the north from her father's home. To the south, trees and the rise of the hill screen the view of the apartment buildings on the far side of Bel Pre Road, so the high ground on the subject site is the primary view. Moreover, Ms. Nishioka does not consider the south side of Bel Pre Road to be part of her "community," because the busy road makes an effective separation. She considers the relevant community to be only Homecrest Road.

Ms. Nishioka presented a series of photographs of the area, several of which are reproduced in this report. See Ex. 104-106. She contrasted the setback proposed on the Development Plan at the corner of Bel Pre and Homecrest Roads with the very large setbacks at the Aspenwood Senior Living Community, which is well screened by foliage. The Aspen Hill Club, too, is very well screened by foliage and significant setbacks, and Homewood House is well

screened by foliage and extensive berms. In addition, the three single-family homes on the west side of Homecrest Road are set back significant distances from the road, at least 90 feet, and are all modest, single-story homes with low-profile roof lines. Ms. Nishioka concluded that because of the screening, setbacks and topography, the only real view from her father's home is to the east, looking at the subject site. Right now, the family has a panoramic view of open space. Ms. Nishioka compared that to the view she expects if the proposed development goes forward.

The Development Plan identifies the proposed single-family detached homes with two model names: "Tolstoy" and "Faulkner." Ms. Nishioka took photographs of some "Tolstoy" homes built by Ryan Homes in a Clarskburg development, which she felt gave an idea of the height and bulk that a grouping of these homes would produce. See Ex. 107. Ms. Nishioka found that the group of homes had a very strong visual impact, which she anticipates would be true on the subject site, as well, especially for the first 15 to 20 years, when she expects "you have absolutely no vegetation." Tr. Aug. 8 at 140. Because of the depth and height of these buildings, Ms. Nishioka argued, you see "a lot of wall." *Id.* You do not get a sense of the open space that her community was originally about, with homes that had yards and vistas.

Ms. Nishioka also complained that the rigid, straight lines of the proposed development would not follow the contours of the land, as Homecrest Road and the existing land uses on it have done. She objects to the tall, steeply sloped roofs on the models proposed for this development, which, as Mr. Kirby acknowledged, tend to add to the bulk of the homes. Ms. Nishioka further objects that the models chosen for this site would be architecturally incompatible with the modest, low-rise homes across the street, and with their deep setbacks. She objects to having a development that is out of character at the cornerstone location for her community.

Ms. Nishioka stressed that the compatibility of the proposed development should be judged based on the uses in the area that are permitted by right, not the special exceptions that have inundated the neighborhood: the Aspenwood Senior Living Community, Homewood House, the Vedanta Center, the Moose Lodge, the Aspen Hill Club, and a child day care center. Ms.

Nishioka finds it fundamentally unfair that the County imposed all of these special exceptions on this neighborhood, and now a rezoning can be imposed because the special exceptions have changed the character of the neighborhood from what it once was. Tr. Aug. 8 at 148-49. She noted that because of the number of special exceptions in this area, in 1999 two County Council members used the area as an example of over-proliferation of special exceptions, to get better tools for the Board of Appeals. Ms. Nishioka quoted the Master Plan, which states that some special exceptions were approved that are out of character and scale with the low density nature of the surrounding community, and that any modifications or additions to existing buildings to accommodate special exceptions should be compatible with the architecture of the adjoining neighborhood and not significantly larger than nearby structures. Ms. Nishioka stated that the County has taken away all the potential for having neighbors at this location by allowing so many special exceptions. All they have left is the subject site, and the proposed development would not look like her neighborhood. The visual impact wouldn't even be minimized, like the special exceptions, by large setbacks.

Applicant's counsel asked Ms. Nishioka whether anything could be built on the portion of the subject site fronting on Homecrest Road that she would consider to be in keeping with the neighborhood. She replied that she would like it if two homes were built on that stretch of land, with plenty of open space around them. Tr. Aug. 8 at 153.

C. Applicant's Rebuttal

1. Scott Wolford, land planner. Tr. Aug. 8 at 77-80.

Mr. Wolford testified in response to Mr. Bronstein's suggestion about splitting up the MPDU buildings. He stated that switching locations between one of the MPDU buildings and the single-family detached home shown at the corner of Homecrest Road and Road A would be problematic. First, the orientation of the detached home would have to be rotated to give it roadway access, but the current MPDU lot is too shallow to accommodate it in that direction – it would require shifting several other lots a few feet to the north, which would make

the play area smaller. Second, placing the three-unit MPDU building on the corner site would require three driveway access points onto Road A, and it would back the fairly shallow backyards of the MPDUs into the side yard of the detached home next door. Creating enough space for the MPDU building at that location would require taking some space out of the reforestation parcel.

Mr. Wolford opined that the location shown on the Development Plan for the MPDUs is the best for the site. It gives each of the MPDUs a longer driveway to accommodate two cars in the driveway, and it allows guest parking without putting the parking on Road A. It also presents the best possible façade on Homecrest Road, and allows the reforestation parcel and the play area to be as large as possible. He noted that the switch Mr. Bronstein suggested would move the MPDUs approximately 165 feet.

2. Nat Ballard, land planner. Tr. Aug. 8 at 84-86.

Mr. Ballard testified, as a lay witness, to explain the applicable forest conservation requirements. He stated that one of Technical Staff's expectations for the PD Zone, based on the language stating that the preservation of tree is one of its goals, is that all forest conservation requirements be met on site. He added that areas of forest retention typically are put in a Category I Conservation Easement, which does not allow any intrusion, such as mowing grass. Mr. Ballard indicated that the Applicant discussed with Staff the possibility of putting the reforestation area along Homecrest Road into a Category II easement, which would allow mowing and some maintenance. However, the Applicant would get only partial credit with that type of easement, which would not allow it meet its forest conservation requirements on site. Accordingly, the Applicant will need to put all 4.73 acres of forest retention and reforestation in a Category I easement. This commitment was added to the Development Plan as a binding element after the hearing.

3. Wes Guckert. Tr. Aug. 8 at 108-112.

Mr. Guckert testified on rebuttal that a 60-foot right-of-way at the entrance to Road C would allow for access to and from the Aspen Hill Club and would be sufficient to accommodate the combined traffic. In his view, what is operative is not what the Master Plan recommended, but what is necessary to accommodate the expected traffic. In Mr. Guckert's opinion, the roadway shown on the Development Plan clearly can meet that goal. He noted that regardless of whether the right-of-way measures 60 feet or 70 feet, there would not be more than 40 feet of pavement approaching the intersection, which is enough for one good inbound lane, 16 feet wide, plus two 12-foot outbound lanes, one for right turns and one for left turns. Mr. Guckert suggested that the traffic anticipated from the proposed residential development and the Aspen Hill Club could even be accommodated with less than 60 feet of right-of-way (the lane widths could be reduced to 14, 11 and 11, although 16, 12 and 12 is ideal).

Mr. Guckert explained that Road C is proposed to taper off after its intersection with Road B for two reasons. First, the most appropriate location for any entrance to the Aspen Hill Club from Road C would be opposite Road B. As a result, traffic to and from the Aspen Hill Club would not impact Road C east of that point. Second, residents of the proposed development also would join the stream of traffic on Road C at Road B, so the two-lane approach to Homecrest Road would only be necessary only from Road B to Homecrest Road. Even aside from the efficiency of the road connections, Mr. Guckert noted, pushing the connection to the Aspen Hill Club farther east would disrupt existing buildings and courts on the Aspen Hill Club property.

4. Jeff Kirby, Applicant. Tr. Aug. 8 at 153-155.

Mr. Kirby responded, at the Hearing Examiner's request, to Ms. Nishioka's photographs of a Ryan homes development in Clarksburg. He acknowledged that the Development Plan identifies the Tolstoy model that Ms. Nishioka photographed. He contended, however, that the house can take different shapes and sizes depending on the lot and the community. Mr. Kirby stated that without research into the development Ms. Nishioka photographed, he does not know

how wide and deep the houses are, or what additions have been put on. He noted that the houses in the photographs have walk-out basements, which is not common.

V. ZONING ISSUES

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term “Euclidean” zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building height. In the State of Maryland, a property owner seeking to reclassify his or her property from one Euclidean zone to another bears a heavy burden to prove either a change in circumstances or a mistake in the original zoning. See *Stratakis v. Beauchamp*, 268 Md. 643, 652-53 (1973).

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, *i.e.*, it satisfies the purpose clause and requirements for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

PD (Planned Development) zones are a special variety of floating zone with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-tailored specifications, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings. These specifications are set forth on a development plan to facilitate appropriate zoning oversight by the District Council. Pursuant to Code §59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when

the property is reclassified to the PD Zone. Once it is approved, the development plan provides the design specifications for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones. Accordingly, the evaluation of zoning issues must begin with the development plan and proceed to the requirements of the zone itself.

A. The Development Plan

Before approving a development plan, the District Council must make five specific findings set forth in Code § 59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas. The required findings are set forth below in the order in which they appear in the Zoning Code, together with the grounds for the Hearing Examiner's conclusion that the evidence in this case supports the required findings.

- (a) *That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies.***

The first sentence of the purpose clause for the PD Zone establishes consistency with the master plan as an important factor in applying the zone:

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional district and the area master plans by permitting unified development consistent with densities proposed by master plans.

The density category indicated on the applicable master plan has special status in a PD Zone. If the District Council desires to grant reclassification to a PD Zone with a density category *higher* than that indicated on the applicable master plan, such action requires the affirmative vote of at least six members of the District Council. Code §59-D-1.62. In this case, the Applicants seek the density category recommended in the Master Plan, so a supermajority vote is not necessary.

In the present case, both the Planning Board and Technical Staff found that the proposed development conforms to the recommendations of the *1994 Approved and Adopted Aspen Hill Master Plan*. The Hearing Examiner agrees.

The Development Plan is in compliance with the Master Plan's broad goals related to housing, the environment, and community identity and design. The three unit types proposed offer a choice of housing types for people of varying incomes and lifestyles. The most significant natural resources on the site would be fully preserved within the stream valley. The Master Plan's goal with regard to community identity and design is to "[p]rovide for attractive land uses that encourage opportunity for social interaction and promote community identity." Master Plan at 22. The Development Plan would serve this goal by creating a well-planned community, with uniform landscaping and fencing along Homecrest Road, an architecturally interesting worship building serving as a "visual accent", and a network of sidewalks and paths connecting the various residential areas with each other, the worship center, the recreation area, the partial stream valley trail and neighboring sidewalks.

The site layout might better meet the Master Plan's goal of increasing community interaction and reducing the social and physical isolation of portions of the community if the MPDUs were distributed in more than one location on the site, rather than located together at one end of the main internal road. However, their current location is an improvement over the earlier plan, because they are now on the main road, rather than on a narrower stub road. The residents of the MPDUs would have neighbors in detached homes on three sides, and there is every reason to expect they would be fully integrated into the life of this small community. The Hearing Examiner finds that the Development Plan substantially complies with the Master Plan's community identity goals.

The Development Plan also complies with the specific recommendations made for the Western Bel Pre Road Area: PD-2 zoning for consolidations of ten acres or more;

protection of Bel Pre Creek and the stream buffer areas; and consolidated, on-site storm water management.

Mr. Kauffunger continues to find that the proposal for Road C, along the northern boundary line, does not sufficiently comply with the Master Plan. This road is central to the Master Plan's vision for the development of the subject property and nearby parcels. The Master Plan calls for a network of internal roadways to reduce the need for curb cuts on Bel Pre Road, reduce the environmental impacts of development on Bel Pre Creek, and provide a way for new development to enter busy Bel Pre Road at a signalized intersection. The Master Plan specifically recommended, both pictorially and in the text, an internal roadway along the northern edge of the subject property, with access from Homecrest Road. The road is recommended to be built to primary road standards to the point where access might have to be supplied for the Aspen Hill Club, then to secondary standards thereafter. The submitted Development Plan provides for construction of the road with a 60-foot right-of-way to the point where access might have to be provided to the Aspen Hill Club (meeting secondary roadway standards, not primary), tapering down to a 50-foot right-of-way for the rest of its length (meeting tertiary roadway standards, not secondary). Mr. Kauffunger is correct that Road C as shown on the Development Plan is not in strict compliance with the Master Plan's right-of-way recommendations. The Planning Board and Technical Staff, however, found substantial compliance with the Master Plan for the Development Plan as a whole. Moreover, the unrefuted testimony of the Applicant's traffic planner is that the right-of-way widths proposed would be adequate to handle the expected traffic. The Hearing Examiner finds that the departure from the Master Plan's specific roadway standards is not sufficient to derail this application's substantial compliance with the Master Plan.

Several community members argue that the proposed Development Plan fails to comply with the Master Plan's recommendation for a "green corridor" along Bel Pre Road. They maintain that to comply with the Master Plan, and to improve pedestrian safety, the Applicant

should be responsible for creating a landscaped strip to separate the sidewalk from the road. The Applicant contends that it would satisfy the “green corridor” recommendation by planting trees along its Bel Pre Road frontage, even though they would not separate the sidewalk from the road. The Hearing Examiner is puzzled by the Applicant’s refusal to satisfy the community’s desire for a safer, more attractive sidewalk along this stretch of road. However, although the Hearing Examiner believes that the better interpretation of the Master Plan would call for street trees between the street and the sidewalk, she considers the Applicant’s partial compliance with the green corridor recommendation sufficient to support a finding of *substantial* compliance with the Master Plan as a whole.

Based on the preponderance of the evidence, the Hearing Examiner finds that the proposed development would be in substantial compliance with the use, density and other recommendations of the Master Plan.

The evidence supports the conclusion that the Development Plan does not conflict with any other county plans or policies, or the capital improvement program. It would further county housing policy by creating diverse housing options, including affordable housing, and (as discussed in Part III.H. above) would not be inconsistent with the Growth Policy.

- (b) That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.***

1. Purposes of the Zone

The purpose clause for the PD Zone, found in Code §59-C-7.11, is set forth in full below, with relevant analysis and conclusions for each paragraph following.

It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater

efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.

It is further the purpose of this zone that development be so designed and constructed as to facilitate and encourage a maximum of social and community interaction and activity among those who live and work within an area and to encourage the creation of a distinctive visual character and identity for each development. It is intended that development in this zone produce a balance and coordinated mixture of residential and convenience commercial uses, as well as other commercial and industrial uses shown on the area master plan, and related public and private facilities.

It is furthermore the purpose of this zone to provide and encourage a broad range of housing types, comprising owner and rental occupancy units, and one-family, multiple-family and other structural types.

Additionally, it is the purpose of this zone to preserve and take the greatest possible aesthetic advantage of trees and, in order to do so, minimize the amount of grading necessary for construction of a development.

It is further the purpose of this zone to encourage and provide for open space not only for use as setbacks and yards surrounding structures and related walkways, but also conveniently located with respect to points of residential and commercial concentration so as to function for the general benefit of the community and public at large as places for relaxation, recreation and social activity; and, furthermore, open space should be so situated as part of the plan and design of each development as to achieve the physical and aesthetic integration of the uses and activities within each development.

It is also the purpose of this zone to encourage and provide for the development of comprehensive, pedestrian circulation networks, separated from vehicular roadways, which constitute a system of linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities, and thereby minimize reliance upon the automobile as a means of transportation.

Since many of the purposes of the zone can best be realized with developments of a large scale in terms of area of land and numbers of dwelling units which offer opportunities for a wider range of related residential and nonresidential uses, it is therefore the purpose of this zone to encourage development on such a scale.

It is further the purpose of this zone to achieve a maximum of safety, convenience and amenity for both the residents of each development and the residents of neighboring areas, and, furthermore, to assure

compatibility and coordination of each development with existing and proposed surrounding land uses.

This zone is in the nature of a special exception, and shall be approved or disapproved upon findings that the application is or is not proper for the comprehensive and systematic development of the county, is or is not capable of accomplishing the purposes of this zone and is or is not in substantial compliance with the duly approved and adopted general plan and master plans. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each planned development, and the district council and the planning board are empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.

1st paragraph: Master Plan implementation. As discussed under (a) above, the proposed development would be in substantial compliance with the recommendations and objectives of the Master Plan. It would also integrate mutually compatible uses and provide more efficient circulation, access and storm water management than could be achieved under the current conventional zoning, as well as better environmental protection and amenities.

Second paragraph: social and community interaction, distinctive visual character, balanced mix of uses. As Technical Staff and the Applicants' land planner found, the proposed development would achieve these objectives in several ways. The development would have a distinctive visual character because a worship center would occupy a prominent central location, because much of the site would consist of open stream valley buffer, and because of the unusual architecture proposed for the new Vedanta Center building. A network of pedestrian sidewalks and trails would facilitate social and community interaction by connecting each of the residential areas with each other, the Vedanta Center, the recreation areas on Road B, a path along part of the stream buffer, and adjoining public sidewalks. The subject site is in relatively close proximity to shopping, parks and public transportation, and testimony indicated that there is a substantial amount of pedestrian activity, despite marginally adequate sidewalks, providing opportunities for interaction between residents of the proposed development and the surrounding community. In addition, the expansion of the Vedanta Center would enhance opportunities for fellowship and community among its members and visitors, who would be part of the larger community as well.

Most of the homes would face other homes, further encouraging social interaction and a sense of community within the development. One possible flaw in the plan is that the decision to face all of the homes inward, with their rear facades toward the roadways, tends to cut off opportunities for interaction between residents of the proposed community and those in the surrounding area. It might have been preferable, from a public interest standpoint, to strike the balance in favor of integration with the larger community, given that the three homes on the west side of Homecrest Road have few neighbors. The record suggests that this decision was made at the urging of Technical Staff, who apparently felt that an internal sense of community was more important. However, this issue is not enough, in the Hearing Examiner's view, to undercut the conclusion that overall, the proposed development would satisfy this element of the purpose clause.

The unified sense of community that the purpose clause suggests might be attained to a higher degree if the duplex units were adjacent to the single-family homes, rather than separated from them by the Vedanta Center parking lot, as suggested by some community members during the first hearing. On the other hand, the worship center would be less integrated into the development if the location of the duplex units did not require paths that would lead residents to walk the grounds of the Vedanta Center to reach the trail along the stream valley and the community recreation areas. Moreover, the Hearing Examiner's review of the Development Plan suggests that the area shown for the Vedanta Center parking lot is significantly smaller than the area shown for the duplex units and differently configured, making the suggested "switch" impractical.

The proposed development does not include commercial uses due to its size, but it does include a mix of residential use types, recreational opportunities and a religious use. Technical Staff indicates that commercial uses would not be appropriate for a development of this size. See Ex. 33.

Based on the preponderance of the evidence, the Hearing Examiner concludes that the development depicted on the proposed Development Plan would satisfy this element of the purpose clause.

Third paragraph: broad range of housing types. The proposed development would provide a broad range of housing types, including two-to-three bedroom MPDUs, three-bedroom duplex units, and four-bedroom single-family detached homes. These options would attract residents with varying lifestyles and income levels. The development would broaden the mix of housing types in the surrounding area, in which residential uses other than single family detached homes currently dominate.

Fourth and fifth paragraphs: trees, grading and open space. The proposed development would preserve four acres of existing forest, mostly in the stream valley, and would create a reforestation area measuring 0.72 acres. The layout of the Development Plan would minimize grading by preserving the stream valley buffer and existing Vedanta Center buildings, and through efficient layouts making use of the existing topography. Contrary to statements made by some community members, there is no evidence of record to suggest that the Applicant intends to clear and re-grade the entire site. On the contrary, significant forested areas are to be preserved, particularly in the stream valley.

Both residents of the proposed development and visitors to the Vedanta Center would be able to enjoy the visual beauty of the stream valley from the trail, the sidewalks and the recreation areas on Road B. The stream valley would provide a lovely vista for the six homes proposed at the northeast end of the site. The main open space area, which is the stream valley, is not readily accessible to the general public because it is set back from the roads. Area residents might be able to enjoy the trail along the stream buffer by parking in the Vedanta Center parking lot, which by all accounts is empty much of the time. Mr. Kauffunger stated during the first hearing that parking would not be available on the street next to the recreation areas, which would have a clear view of the stream valley. However, the record indicates that

Road B would be a dedicated public roadway with 26 feet of pavement, which could allow for at least some parking along one side of the street. In addition, the preserved stream valley on the subject property would continue to form part of and support the health of the larger stream valley that runs through the area, which serves as a valuable amenity for all area residents.

Additional open space is shown on Parcel I, the reforestation area proposed along Homecrest Road. This area would be a visual amenity for area residents and visitors, particularly as it matures. The Hearing Examiner agrees with Technical Staff that the open space requirement is geared more towards large projects, and that for a development of this size, the open space and access shown is adequate. See Ex. 33.

Sixth paragraph: pedestrian networks. Pedestrian activity would be encouraged by a network of pedestrian sidewalks and trails linking the residential areas with one another, the worship center, the recreation areas on Road B, the partial stream valley trail and the nearby public sidewalks. The subject site is located with one block of bus stops on both Bel Pre and Homecrest Roads. The availability of pedestrian sidewalks and paths separate from roads, and the proximity to public transportation, would both reduce reliance on automobiles.

Seventh paragraph: scale. The PD Zone encourages, but does not require, development on a large scale. The proposed Development Plan would consolidate three parcels for a total of 16 acres of land. While not large in an absolute sense, the proposed development would aggregate enough parcels to satisfy the Master Plan's specific size recommendation for PD-2 zoning, with enough to space to permit three different unit types and the efficiency of joint storm water management and road connections.

Eighth paragraph, first part: maximum safety, convenience and amenity. The evidence demonstrates that the proposed development would provide safe and convenient roadways, sidewalks and pathways, provided that the necessary steps are taken to assure adequate sight distances for the Bel Pre Road entrance and the access to Road C. On Bel Pre Road, adequate sight distance likely would require cutting back vegetation and moving a utility

pole by a few feet. At the access point to Road C, ensuring a safe condition might require providing access to the Aspen Hill Club from Road C.

The sidewalk along Bel Pre Road would undoubtedly be safer and more attractive with a landscaped strip separating it from the roadway. However, in light of other features of the plan, the Hearing Examiner does not consider this step essential to satisfying the purpose clause.

Residents of the homes on the west side of the site would have access to Bel Pre Road at a signalized intersection. Residents of the duplex units and visitors to the Vedanta Center would not have that advantage, but their shared access point would improve safety on Bel Pre Road by reducing the number of curb cuts along this stretch of land from two to one. The proposed pathways, partial stream valley trail and recreation area represent amenities that would be available to residents of the development and to any residents of the larger community who care to enter the development to view the stream valley. The reforestation area on Homecrest Road would be an additional visual amenity for area residents and visitors.

Eighth paragraph, second part: compatibility. The Hearing Examiner is persuaded that the proposed development as now configured would be compatible with existing uses in the surrounding area. The proposed uses, residential and worship center, are clearly compatible with the surrounding area, which is used primarily for residential purposes. For the reasons discussed below, the Hearing Examiner finds the current Development Plan to be compatible with the surrounding area, as well.

The duplex units would be adequately buffered from the Moose Lodge building by 77 feet of forested land, which would provide substantial visual and noise screening. Across Bel Pre Road, the duplex units would confront townhouses that are built at a density of five dwelling units per acre, significantly higher than the 2.4 d.u./acre proposed for the subject site overall. The townhouses and single-family detached home with frontage on Bel Pre Road, in the southwest corner of the site, would confront townhouses built at five d.u./acre and three-story

multi-family units with a density of approximately 22 d.u./acre. Moreover, the dwellings across Bel Pre Road are set back a significant distance from the street, so the impact of the new development likely would not be substantial. The homes in the northeast corner of the site would abut the wooded portion of the Moose Lodge property to the east. To the north, they would confront the Aspen Hill Club, which has a substantial level of on-site activity and, in all likelihood, would not be affected by these homes.

In the earlier proceeding, the Hearing Examiner considered the number and size of the units proposed along Homecrest Road to be incompatible with the surrounding area, and particularly with the three low-scale, single-family detached homes across the street. Based on the current Development Plan, the Hearing Examiner now finds the proposed development compatible with its surroundings. These units are the most visible in the west end of the site, with their long street frontage. They play a key role in the visual impact of the proposed development on the intersection and on Homecrest Road. The Development Plan proposes a total of seven detached homes along Homecrest Road, arranged on either side of a 0.63-acre reforestation area. They have setbacks from the face of curb varying from 56 feet to 80 feet, and the distance between them varies from 12 feet to 43 feet. These seven homes would be across the street from the Aspenwood Senior Living Community and three single-family detached homes, all of which have substantial front building setbacks. The three single-family homes would be directly across from the reforestation area and the four homes flanking it. The reforestation would be visually prominent because it would occupy roughly the same amount of street frontage as the four houses surrounding it.

The Homecrest Road frontage is divided into two sections by Road A, which enters the community about 800 feet from the intersection with Bel Pre Road. South of Road A, the plan shows three detached homes. The corner house is shown about 56 feet from the face of curb and 43 feet from the next house to the north. The next two houses are 56 and 67 feet back from the curb, respectively, and 12 feet apart from one another. On the other side of Road

A, the four homes are grouped in two's – two south of the reforestation area, and two north of it. Each group of two houses is about 15 feet apart, and they are set back between 62 and 80 feet from the curb. The overall effect is to break the straight line of houses, tight together, that was problematic on the earlier plan. With the number of houses reduced to seven, and the creation of a reforestation area equal in size to about four lots, there is enough space for each house to have a substantial amount of open space on at least one side. For three houses that space is occupied by a side yard and a road, and for the other four it is green space.

The visual impact of the houses along Homecrest Road would be softened by 20 feet of landscaping, in addition to a sidewalk and street trees. Ms. Nishioka's assumption that the landscaping would be so insignificant as to have no effect for 15 to 20 years is not supported by the commitments the Applicant has made, in testimony and on the Development Plan, to include larger caliper hardwood and evergreen trees in the Homecrest Road landscaping. The inset on the Development Plan shows the landscaped buffer area made up of evergreens, shade trees, ornamental trees, shrubs and perennials. The reforestation area would be bordered by the same landscaped buffer. The Applicant has committed to including larger caliper hardwood and evergreen trees along Homecrest Road, and to avoid non-native and invasive species. The Applicant has also committed to design and finish the rears of homes facing Homecrest Road with architectural features normally found on building fronts, such as double-hung windows with circle tops, and additional moldings around doors and windows.

One concern raised by Ms. Nishioka that is not addressed on the Development Plan is the size, bulk and architectural style of the proposed homes. Ms. Nishioka believes that the style and size of homes proposed for this site would be out of character with the three modest, low-scale single-family homes across Homecrest Road. It is certainly true that the homes the Applicant proposes would be taller and of a different architectural style than the three homes across the street, although not necessarily to the degree suggested by the Ryan Homes photographs Ms. Nishioka submitted – it is not clear whether those photographs fairly represent

what the Applicant proposes at this location. Some people might find the proposed development more aesthetically pleasing with the low-scale, Craftsman-style homes that Ms. O'Neill, the architect, suggested. The Applicant is entitled, however, to propose a form of development that it believes will fit the market. Moreover, compatible need not mean "the same." With implementation of the present Development Plan, the three homes across the street would face four homes and a substantial reforestation area, all bordered by a 20-foot landscaped buffer, a sidewalk and a row of street trees. A view of trees and houses would be a change from the current open vista of green fields, but with the environmental constraints on this site, it is difficult to imagine how it could be developed at the density called for in the Master Plan – two dwelling units per acre – without materially changing that vista. Ms. Nishioka's preference for two homes on the roughly five acres of the site along Homecrest Road is not consistent with the Master Plan's recommendations. As the Master Plan makes clear, the purpose of recommending PD zoning for the subject property was to provide an incentive for consolidation of lots to attain the benefits discussed earlier in this report, including efficient road access with fewer curb cuts, joint storm water management and more effective environmental protection.

Compatibility also must be examined taking into account the entire surrounding area, not just viewing the three single-family homes across from the subject site in isolation. Ms. Nishioka's frustration with the proliferation of special exceptions in the immediate vicinity of her father's home is understandable. Nonetheless, it would be inappropriate, in the context of a rezoning case, to ignore the existence of those special exceptions. The surrounding area in this case is not predominantly a neighborhood of single-family, detached homes. It has a mix of single-family, multi-family and institutional residential uses, plus the Aspen Hill Club. The buildings in the surrounding area, and even in the immediate vicinity of the subject site, vary from one story to five stories, and several of them have very large parking lots that create a decidedly non-rural impression. In this larger context, the 40-foot homes proposed by the Applicant would blend well with their surroundings.

The Hearing Examiner sees no justification to impose on this Development Plan, as requested by the Aspen Hill Club, a requirement for the type of berms and landscape buffering that were required for the Aspen Hill Club and other special exceptions in the surrounding area. Special exceptions are typically required to create buffers where they abut single-family residential property, to protect residential uses from the adverse effects of *non-residential* special exceptions. The level of activity, noise and traffic impacts of non-residential uses are different, and typically more intense, than those of single-family residential uses. Accordingly, the extensive berms, setbacks and screening surrounding several of the nearby special exceptions are appropriate for those uses, but not for the residential community proposed here.

For all of the reasons stated above, the Hearing Examiner concludes that the proposed rezoning and development would be compatible with existing land uses in the surrounding area.

Ninth paragraph: three findings. The purpose clause states that the PD Zone “is in the nature of a special exception,” and shall be approved or disapproved based on three findings:

- (1) the application is or is not proper for the comprehensive and systematic development of the county;
- (2) the application is or is not capable of accomplishing the purposes of this zone; and
- (3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

On the Hearing Examiner’s reading, this element of the purpose clause does not add new requirements, but reminds the District Council of its responsibility to carefully consider whether the PD Zone would be appropriate in the location for which it is requested. The conclusions drawn earlier in this section govern the findings to be made here. Based on the preponderance of the evidence and for the reasons stated above, the Hearing Examiner concludes that present application is proper for the comprehensive and systematic development

of the County; is capable of accomplishing all of the purposes of the zone; and is in substantial compliance with the Master Plan.

2. Standards and Regulations of the Zone

The standards and regulations of the PD-2 Zone are summarized below, together with the grounds for the Hearing Examiner's conclusion that the proposed development would satisfy these requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is recommended in the Master Plan for PD-2 zoning, provided there is a consolidation of at least ten acres. The subject property represents an assemblage of approximately 16 acres, so this requirement is satisfied.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the last of these criteria, which states the following:

That the Property is recommended for the PD zone in an approved and adopted master or sector plan and so uniquely situated that assembly of a minimum gross area to accommodate at least 50 dwelling units is unlikely or undesirable and the development of less than 50 dwelling units is in the public interest.

The subject property is recommended for the PD Zone in the Master Plan. It is not large enough, at 16 acres with a density of two units per acre, to accommodate 50 dwelling units. Applicant J. Kirby Development represented that its efforts to negotiate with the adjacent Wheaton Moose Lodge for additional land at the rear of the Moose Lodge parcel were unfruitful. Mr. Courtney, representing the Moose Lodge, confirmed this, stating that the Lodge rejected the request for negotiations. The adjacent property to the north is fully developed and used by the Aspen Hill Club, and the other two boundaries of the property abut roadways. The evidence indicates that development of the subject property with less than 50 units would be in the public

interest, as it would allow implementation of the Master Plan's goals for this property. Accordingly, the Hearing Examiner agrees with Technical Staff's conclusion that this requirement is satisfied.

Section 59-C-7.131, Residential Uses. Pursuant to Code §59-C-7.131, all types of residential uses are permitted, but parameters are established for the unit mix. A PD-2 development with less than 50 units must have at least 35 percent single-family detached units and at least 35 percent townhouse or single-family attached units. The proposed Development Plan provides for 54 percent single-family detached units and 46 percent single-family attached or townhouse, satisfying this requirement.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but not required under the PD Zone. Parameters established for commercial uses are not applicable to the subject application, which is limited to residential uses.

Section 59-C-7.133, Other Uses. Noncommercial community recreational facilities for the use of residents, such as the recreation areas on Road B and the trail along part of the stream valley, are permitted in the PD Zone. The PD Zone permits any nonresidential, noncommercial use at the discretion of the District Council, on a finding that such use is compatible with the planned development and satisfies the requirements of Section 59-C-7.15. The Vedanta Center may be considered a nonresidential, noncommercial use, and in the Hearing Examiner's view, should be considered compatible with the proposed development. It would provide a visual amenity, possibly a worship center for some residents, and a quiet neighbor. As discussed below, the specific compatibility requirements of Section 59-C-7.15 also would be satisfied.

Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following direction for the District Council in considering a request for the PD Zone (§ 59-C-7.14(b)):

The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the

general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant.

The density category applied for, PD-2, is the lowest density available in the PD Zones, and is recommended in the Master Plan. All of the evidence indicates that this density category is appropriate for the site.

Section 59-C-7.15, Compatibility. This section requires that a proposed development be compatible internally and with adjacent uses. It also establishes minimum parameters for setbacks and building height that are designed to promote compatibility. As discussed in Part V.A.(b)(1) above, the Hearing Examiner finds that the proposed development would be compatible with existing development in the surrounding area. The application also satisfies the specific setback and building height provisions.

Section 59-C-7.15 of the Zoning Ordinance states that where land classified under the PD Zone adjoins land for which the area master plan recommends a one-family detached zone, no building other than a one-family detached residence may be constructed within 100 feet of such adjoining land, and no building may be constructed at a height greater than its distance from such adjoining land. The Development Plan specifies a maximum height of 40 feet for all residential units, and notes that all units are located at least 60 feet from the only adjacent land that is recommended in the Master Plan for single-family detached zoning, which is the Aspen Hill Club property to the north. Moreover, it is evident on the Development Plan that all units shown within 100 feet of the northern property line are single-family detached homes. The new Vedanta Center building would be over 400 feet from the adjacent property to the north. Adjacent property to the east is recommended in the Master Plan for PD-2 zoning, and to the south and west are roadways, so these limitations do not apply.

Section 59-C-7.16, Green Area. The PD-2 Zone requires a minimum of 30 percent green area. The Development Plan depicts green space of 7.3 acres, or approximately 46 percent of the site, and specifies that a minimum of 45 percent green area will be provided.

Section 59-C-7.17, Dedication of Land for Public Use. This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated to public use, with such dedications shown on all required development plans and site plans. The Development Plan shows the small dedication required for the right-of-way of Homecrest Road (described by Technical Staff as about six feet deep), as well as the 50- and 60-foot dedications necessary for Road C, a 27-foot dedication for Road B, and a 26-foot dedication for Road A. No other dedications are anticipated.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. As shown on the Development Plan, the proposed project would provide more than the required number of spaces for the single-family detached units, the number of spaces required for the other residential uses, and more than the number of spaces required for the Vedanta Center.

The final two elements of finding (b), the maximum safety, convenience and amenity of the residents, and compatibility, have already been addressed.

(c) *That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

The evidence supports a finding that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient. The internal circulation system would not provide vehicular connectivity, to avoid creating a cut-through route for motorists trying to circumvent the traffic light. It would, however, provide pedestrian connections among the residential areas, the worship center, the partial stream valley trail and nearby sidewalks, all separate from roadways.

As discussed in Part III.H.1. above, the Hearing Examiner concludes, based on a preponderance of the evidence, that the proposed points of external access can be constructed in the locations shown in a manner that would be safe, adequate and efficient.

- (d) ***That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.***

The proposed development would tend to prevent erosion of the soil and preserve natural vegetation and other natural features of the site by preserving the stream valley buffer and additional small, forested areas. Efficient layouts making use of the existing topography, together with preservation of the stream valley, would minimize grading. The evidence establishes that forest conservation requirements under Chapter 22A would be satisfied. The current concept storm water management plan had not yet received DPS approval at the time of the hearing. However, the evidence indicates that the current plan contains only minor differences from an earlier plan that was approved by DPS, and that no waivers are likely to be needed.

- (e) ***That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.***

The Applicant has provided draft documents that adequately provide for perpetual maintenance of common and quasi-public areas by the HOA. See Ex. 26(c).

B. Public Interest

The applicant must show that the proposed reclassification bears sufficient relationship to the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.”

[*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and any adverse impact on public facilities or the environment. The Planning Board and Technical Staff concluded that the proposed development would substantially comply with the recommendations and objectives of the *Aspen Hill Master Plan*, and for the reasons stated in Part V.A. above, the Hearing Examiner agrees.

The evidence of record indicates that the proposed development would have no adverse effects on traffic conditions, schools or public utilities, and would comply with forest conservation and stormwater management regulations.

Accordingly, having carefully weighed the totality of the evidence, the Hearing Examiner concludes that approval of the requested zoning reclassification would be in the public interest.

VI. CONCLUSIONS

Based on the foregoing analysis and after a thorough review of the entire record, I reach the conclusions specified below.

A. Development Plan

1. The submitted Development Plan is in substantial compliance with the Master Plan.
2. The Development Plan complies with the purposes, standards, and regulations of the PD-2 Zone and provides for a form of development that will be compatible with adjacent development.
3. The Development Plan proposes internal vehicular and pedestrian circulation systems and points of external access that would be safe, adequate and efficient.
4. By its design, by minimizing grading and by stream valley preservation, the proposed development will tend to prevent erosion of the soil and preserve natural vegetation and

other natural features of the site. The application will comply with forest conservation requirements under Chapter 22A and requirements for water resource protection under Chapter 19.

5. The development plan is supported by documents that adequately and sufficiently show the ownership and method of perpetual maintenance of areas intended to be used for recreational or other common or quasi-public purposes.

B. Zoning Request

Application of the PD-2 Zone at the proposed location is proper for the comprehensive and systematic development of the County because the proposed development, as shown on the submitted Development Plan:

1. Will serve the public interest;
2. Will be in substantial compliance with the applicable master plan; and
3. Will fully satisfy the purposes, standards and regulations of the zone.

VII. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-836, requesting reclassification from the RE-2 Zone to the PD-2 Zone of 16 acres of land located at 2929, 3001 and 3031 Bel Pre Road in Silver Spring, Maryland in the 13th Election District, be **approved** in the amount requested, subject to the specifications and requirements of the final Development Plan, Ex. 112(a); provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council, Exhibit 112(a), with the owner of Lot 3 correctly identified, within 10 days of approval, in accordance with § 59-D-1.64 of the Zoning Ordinance.

Dated: October 10, 2006

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner